KOH KENG JOO & ANOR v. TAN SRI DATO' SERI KHALID ABU BAKAR & ORS

HIGH COURT MALAYA, KUALA LUMPUR
SU TIANG JOO J
[CIVIL SUIT NO: WA-21NCvC-17-02-2020]
27 NOVEMBER 2025

Abstract – *(i) A victim of an alleged State-involved abduction cannot be denied access to the courts simply because they are missing. The court has the inherent power under O. 15 r. 17 of the Rules of Court 2012 to appoint a litigation representative to seek justice for the disappeared; (ii) Prolonged investigative inertia and 'maladministration' – specifically the failure to act on core factual materials for years – constitute a breach of affirmative statutory duties to prevent and detect crime. Such indifference, particularly when it results in the suppression of evidence or the misdirection of a family's pursuit of information, satisfies the requirements for the tort of misfeasance in public office; (iii) The State owes a specific duty of care to a victim of an unlawful seizure when the State is the only entity with the resources and authority to conduct a search. Operational discretion does not immunise the police from a negligence claim where the exercise of power is unreasonable, in bad faith, or characterised by a pattern of omissions and suppression.*

CIVIL PROCEDURE: *Locus standi – Standing to sue – Victim abducted in broad daylight via coordinated tactical operation – Victim's wife appointed as litigation representative – Whether wife had locus standi – Power of court to appoint litigation representative – Rules of Court 2012, O. 15 r. 17*

CONSTITUTIONAL LAW: *Fundamental liberties – Personal liberty – Victim abducted in broad daylight via coordinated tactical operation – Police investigation marked by prolonged inertia and failure to disclose leads – Allegations of evidence suppression, misdirection and breach of statutory duties – Whether there was violation of constitutional rights – Federal Constitution, arts. 5 & 8*

TORT: *Misfeasance – Misfeasance in public office – Victim abducted in broad daylight via coordinated tactical operation – Police investigation marked by prolonged inertia and failure to disclose leads – Allegations of evidence suppression, misdirection and breach of statutory duties – Whether there was breach of statutory duties – Police Act 1967, ss. 3(3) & 20(3) – Criminal Procedure Code, ss. 107A, 119 & 120*

A ***TORT:*** *Negligence – Duty of care – Victim abducted in broad daylight via coordinated tactical operation – Police investigation marked by prolonged inertia and failure to disclose leads – Allegations of evidence suppression, misdirection and breach of statutory duties – Involvement of State and State agents – Whether alleged tortfeasors owed duty of care to claimants – Whether there was breach of duty of*
B *care*

TORT: *Conspiracy – Abduction – Victim abducted in broad daylight via coordinated tactical operation – Police investigation marked by prolonged inertia and failure to disclose leads – Allegations of evidence suppression, misdirection and breach of statutory duties – Whether conspiracy established*

C

TORT: *Vicarious liability – Liability of Government for torts committed by police officers – Victim abducted in broad daylight via coordinated tactical operation – Police investigation marked by prolonged inertia and failure to disclose leads – Allegations of evidence suppression, misdirection and breach of statutory duties –*
D *Whether officers acting under badge of public authority – Whether Government vicariously liable*

The first plaintiff, a Christian pastor, was abducted on 13 February 2017 in a professionally coordinated operation involving several vehicles and masked men. The second plaintiff, the first plaintiff's wife, was appointed as
E his litigation representative. The plaintiffs brought this action against 13 defendants, including former Inspectors General of Police, senior police officers, the Royal Malaysia Police and the Government of Malaysia. An eyewitness ('PW1') observed four sports utility vehicles ('SUVs') surrounding another vehicle and pulling the driver, *ie*, the first plaintiff, into
F one of the SUVs. The entire operation was conducted in broad daylight and lasted less than one minute. It involved a coordinated tactical manoeuver known as a 'vehicle intercept', where three black SUVs boxed in Pastor Koh's car. The abductors were mostly masked and dressed in black military-style outfits with balaclavas. The operation included several vehicles (three SUVs, a gold-coloured Toyota Vios, and a silver Proton Waja) and two
G motorcycles acting as outriders to manage the traffic. One individual was seen recording the entire operation. In the period following the abduction, the plaintiffs sought information from the authorities regarding the whereabouts and fate of the first plaintiff. Various meetings took place between the family and senior police officials, during which updates were
H provided. According to the plaintiffs, however, no conclusive information was ever disclosed. In the years that followed, the plaintiffs continued to pursue clarification and relief through communications with the authorities, including the police and other public bodies. As at the filing of these proceedings in February 2020, the fate and whereabouts of the first plaintiff
I remained unknown. The plaintiffs alleged that the abduction occurred through the acts and omissions of the first to 12th defendants (save for the

ninth defendant). The plaintiffs submitted that (i) the first to fourth, eighth, tenth, 11th and 12th defendants had (a) breached the constitutional rights guaranteed under arts. 5, 8 and 160 of the Federal Constitution ('FC'); (b) committed misfeasance in public office; and (c) including the seventh defendant, conspired to injure; (ii) the fourth to seventh, 11th and 12th defendants (a) were in breach of their statutory duties, in particular s. 20(3) of the Police Act 1967 ('PA') and ss. 107A, 119 and 120 of the Criminal Procedure Code ('CPC'); and (b) were negligent; and (iii) vicarious liability ought to be found against the Government of Malaysia ('13th defendant'). The plaintiffs relied on a combination of direct testimony, CCTV material, Suruhanjaya Hak Asasi Manusia Malaysia ('SUHAKAM') and the Special Task Force ('STF') findings and alleged investigative and post-incident conduct to establish the involvement of State agents. The defendants asserted, *inter alia*, that the second plaintiff had no *locus standi* to initiate this suit on behalf of the first plaintiff.

Held (allowing claim):

(1) Order 15 r. 17 of the Rules of Court 2012 expressly provides that the court may give conduct of any action, inquiry and other proceedings to such person as it thinks fit. As a matter of fundamental principles, it would be a grave travesty of justice if the person who is allegedly responsible for the disappearance of the victim could be heard to assert that the victim should be denied access to even cross the threshold of the courts of law to seek justice. (para 31)

(2a) Although the defendants emphasised that no perpetrator was formally identified, the presence of a gold-coloured Toyota Vios, later revealed to be linked to the special branch personnel of the 12th defendant, could not be ignored. The failure to disclose this information at the initial stage of the investigation weighed heavily against the defendants. The subsequent emergence of this fact during SUHAKAM proceedings supported the inference that material information was being withheld. Although the SUHAKAM and STF inquiries did not bind the court, their findings were relevant. Both inquiries pointed to similarities between the first plaintiff's disappearance and that of Amri Che Mat, including operational methodologies, the type of vehicles utilised and the coordinated seizure of the victim. (paras 83 & 84)

(2b) The absence of legitimate investigative progress over an extended period, despite the availability of CCTV evidence, eyewitness accounts and identified vehicles, pointed to investigative inertia inconsistent with a *bona fide* investigation. While operational discretion existed in policing, it must be exercised diligently. Marked failure to pursue central leads implied that the authorities had reasons not to do so or that those involved in the investigation were themselves connected to the perpetrators. (para 87)

(2c) On a balance of probabilities, one or more of the first to 12th defendants, acting jointly, in combination or otherwise, were directly or indirectly responsible for the abduction and/or enforced disappearance of the first plaintiff. The inference of State involvement was compelling, and the defendants had not displaced it with convincing explanation. (para 96)

(3) The circumstances surrounding the abduction, the conduct of certain identified officers, the concealment of information and similarities with other disappearances cumulatively supported the plaintiffs' case. In the absence of credible alternative explanation and given the defendants' access to material information, the evidential burden shifted to the defendants to displace the inference of involvement or acquiescence. Their failure to do so strengthened the inference that the defendants, directly or indirectly, violated the first plaintiff's rights to liberty and equality before the law. The first plaintiff's constitutional rights, under arts. 5 and 8 of the FC, were violated. (paras 118-120)

(4) The disappearance (of the first plaintiff) remained uninvestigated in any meaningful way over an extended period, notwithstanding that the police had early access to core factual materials. This prolonged inertia, in the face of affirmative statutory duties under ss. 3(3) and 20(3) of the PA, and other relevant sections mentioned in the CPC, reflected a disregard for the very purpose of those duties – to prevent and detect crime and safeguard the life and security of the public. Such indifference, particularly when directed at the family's pursuit of information, constituted maladministration and reinforced the plaintiffs' allegations of misfeasance in public office against the first to fourth, eighth, 11th and 12th defendants. (para 144)

(5a) The CCTV evidence, viewed with the testimony of PW1, disclosed that the abductors operated in concert, utilising multiple vehicles, motorcycles and a tightly sequenced interception. The operation was precise and rapid, lasting less than a minute. Such execution implied pre-planning, logistical preparation and allocation of roles; it was not random violence. The manner of execution was such that it drove the court to hold that it was an organised unit. (para 156)

(5b) The plaintiffs had established the existence of a coordinated plan to abduct the first plaintiff and to thereafter conceal his fate. The nature of the operational conduct, the subsequent exercise of public authority to misdirect or suppress investigation and the alignment between the SUHAKAM and STF findings comprised mutually reinforcing or corroborative strands of circumstantial evidence. The defendants had not displaced these inferences with a credible alternative explanation. (para 172)

(6) Operational discretion did not preclude review where the exercise of power was unreasonable or in bad faith. Where an individual had disappeared in circumstances suggestive of unlawful seizure, and where the police were the only entity with access to resources capable of searching, the relationship between the State and the victim became sufficiently proximate to ground a duty of care. A pattern of omissions and apparent suppression, when viewed cumulatively, indicated a breach of duty to conduct reasonable and diligent inquiry. A reasonable investigation would have provided timely updates, transparency and pursuit of central leads – none of these had been adequately undertaken. (paras 185, 188 & 191)

(7a) The evidence demonstrated that several of the implicated officers, including senior personnel, had control over intelligence, access to official vehicle records and oversight over investigations. The evidence showed that they had been deployed in connection with the abduction and subsequent suppression. This suggested that the wrongful acts were executed under the badge of public authority, notwithstanding their unlawful character. The handling of the gold-coloured Toyota Vios illustrated this connection. The vehicle was owned by the tenth defendant, an operative of the special branch of the 12th defendant and was present at the scene of the abduction. The subsequent concealment of its ownership, revealed only during the SUHAKAM proceedings, implied institutional involvement. Such conduct could only have occurred with the knowledge or acquiescence of officers acting within the apparatus of policing. The link between the Toyota Vios and the policing structure strengthened the case for vicarious liability. (paras 255 & 256)

(7b) The conduct of the investigation, including the delayed disclosure of material information, the charging and subsequent withdrawal of the case against Lam Chang Nam and the redirection of investigative focus, demonstrated misuse of investigative authority. These acts were not a private frolic; they were undertaken through mechanisms available only to police officers. In the context of vicarious liability, misuse of entrusted power by an employee in the course of performing (or purporting to perform) their duties was sufficient to bind the employer. (para 257)

(7c) While specified individuals may not have been conclusively identified, the weight of the circumstantial evidence established that one or more officers were involved in the abduction or subsequent suppression. Once the plaintiffs established that the tortfeasor(s) belonged to the class of public officers under the authority of the 13th defendant, vicarious liability attached. Further, police officers are endowed with coercive powers; the public must be assured that misuse

of those powers would be remedied. Imposing liability on the State served both to compensate victims and to deter institutional neglect. Where the acts complained of were carried out by officers under their badge of authority, it was just that the 13th defendant bore responsibility. (para 260)

(7d) The acts and omissions of one or more of the first to 12th defendants (save for the ninth defendant) were sufficiently connected with their duties as police officers so as to render the 13th defendant vicariously liable. The plaintiffs had proved, on a balance of probabilities, that the tortious acts and omissions were undertaken by public officials under colour of State authority. Hence, the 13th defendant must answer for the resulting harm. (para 263)

(8) Judgment was pronounced in favour of the plaintiffs, with the following reliefs awarded: (i) the first plaintiff was awarded: (a) general damages of RM10,000 per day as from 13 February 2017 until the defendants disclosed with certainty the whereabouts of the first plaintiff; and (b) aggravated damages of RM1 million for the suppression of evidence and prolonged delay in bringing closure to the discovery of the whereabouts of the first plaintiff; (ii) the second plaintiff was awarded: (a) RM2 million for the suppression of evidence, mental anguish and distress and the prolonged delay in bringing the disclosure to the discovery of the whereabouts of the first plaintiff; and (b) exemplary damages of RM1 million by reason of, *inter alia*, oppressive, arbitrary or unconstitutional acts of the first to 12th defendants in combination amongst them; and (iii) the 11th and 12th defendants were to remove any of the defendants, *ie*, the first to eighth defendants, mentioned in this action from any investigative team investigating the first plaintiff's disappearance and the 11th and 12th defendants were to recommence the investigations as per the STF findings and recommendations and to report to the Attorney General's Chambers every two months from the date of this judgment on the updates of the investigation leading to the disclosure of the whereabouts of the first plaintiff. (paras 279-281)

Case(s) referred to:

Ahli-ahli Suruhanjaya Yang Membentuk Suruhanjaya Siasatan Mengenai Rakaman Klip Video Yang Mengandungi Imej Seorang Yang Dikatakan Peguambela Dan Peguamcara Berbual Melalui Telefon Mengenai Urusan Pelantikan Hakim-Hakim v. Tun Dato' Seri Ahmad Fairuz Dato' Sheikh Abdul Halim & Other Appeals [2012] 1 CLJ 805 FC ***(refd)***

Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors & Another Case [1995] 3 CLJ 639 CA ***(refd)***

Airasia Bhd v. Rafizah Shima Mohamed Aris [2015] 2 CLJ 510 CA ***(refd)***

Alvarado Espinoza et al v. Mexico (Judgment Of November 28, 2018) ***(refd)***

Ananthagopi Alaguganesan v. Menteri Dalam Negeri & Ors [2024] 10 CLJ 539 HC ***(refd)***
Arab-Malaysian Finance Bhd v. Steven Phoa Cheng Loon & Ors And Other Appeals [2003] 1 CLJ 585 CA ***(refd)***
B A Rao & Ors v. Sapuran Kaur & Anor [1978] CLJU 14; [1978] 1 LNS 14 FC ***(refd)***
Bamaca-Velasquez v. Guatemala (Judgment Of November 25, 2000 Series C No 70) ***(refd)***
Bato Bagi & Ors v. Kerajaan Negeri Sarawak & Another Appeal [2011] 8 CLJ 766 FC ***(refd)***
Bleier v. Uruguay (Communication No. R7/30, UN Doc Supp No 40 (A/37/40)(1982) ***(refd)***
Browne v. Dunn (1893) 6 R 67 ***(refd)***
CCH & Anor v. Pendaftar Besar Bagi Kelahiran Dan Kematian, Malaysia [2022] 1 CLJ 1 FC ***(refd)***
Christina Carolina Gerarda Johanna Verstappen v. Ketua Polis Negara, Malaysia & Ors [2025] 9 CLJ 785 HC ***(refd)***
Dato' Ramesh Rajaratnam v. Datin Zaleha Abd Rahman & Ors [2014] 5 CLJ 669 CA ***(refd)***
Dato' Seri Anwar Ibrahim v. PP [2014] 5 CLJ 679 CA ***(refd)***
Datuk Seri Khalid Abu Bakar & Ors v. N Indra P Nallathamby & Another Appeal [2014] 9 CLJ 15 CA ***(refd)***
Delfi AS v. Estonia (Application No 64569/09) (2015) (ECtHR) ***(refd)***
Gan Kim Thye v. The Union Omnibus Co Ltd [1969] CLJU 41; [1969] 1 LNS 41 HC ***(refd)***
Global Ventures Network Sdn Bhd v. Lokman Dato' Mohd Kamal & Another Appeal [2018] 7 CLJ 1 CA ***(refd)***
GMP Kaisar Security (M) Sdn Bhd v. Mohamad Amirul Amin Mohamed Amir [2022] 10 CLJ 669 FC ***(refd)***
Godinez Cruz v. Honduras (Judgment Of January 20, 1989. Series C No 5) ***(refd)***
Gopinathan Subramaniam v. Timbalan Menteri Dalam Negeri & Ors [1999] 7 CLJ 558 HC ***(refd)***
Government Of Malaysia & Ors v. Jumat Mahmud & Anor [1977] CLJU 29; [1977] 1 LNS 29 FC ***(refd)***
Government Of Malaysia v. Lim Kit Siang & Another Case [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63 SC ***(refd)***
Hill v. Chief Constable of West Yorkshire [1988] 2 All ER 238 ***(refd)***
Iekmal Hisham Harun lwn. Siti Norfauziah Setapa & Yang Lain [2023] 3 CLJ 745 HC ***(refd)***
Johara Bi Abdul Kadir Marican v. Lawrence Lam Kwok Fou & Anor [1980] CLJU 199; [1980] 1 LNS 199 FC ***(refd)***
Ketua Polis Negara & Ors v. Nurasmira Maulat Jaffar & Ors And Other Appeals [2018] 1 CLJ 585 FC ***(refd)***
Khatri & Ors v. State Of Bihar & Ors AIR 1981 SC 1068 ***(refd)***
Khoo Teng Chye v. Cekal Berjasa Sdn Bhd & Anor [2015] 6 CLJ 449 CA ***(refd)***
Koh Keng Joo & Anor v. Tan Sri Dato' Seri Khalid Abu Bakar & Ors [2025] 1 CLJ 438 HC ***(refd)***
Koperal Zainal Mohd Ali & Ors v. Selvi Narayan (Pentadbir Bersama Estet Dan Tanggungan Chandran Perumal, Si Mati) & Anor [2021] 6 CLJ 157 FC ***(refd)***
Kuwait Oil Tanker v. Al Bader [2000] 2 All ER (Comm) 271 ***(refd)***
Lim Guan Eng v. PP [2000] 2 CLJ 541 FC ***(refd)***
Lister v. Hesley Hall Ltd [2002] 1 AC 215 ***(refd)***
Maharashtra State Board Of Secondary & Higher Secondary Education v. KS Gandhi [1991] 2 SCC 716 ***(refd)***
Mohd Isa Abdul Samad v. PP [2025] 3 MLJ 659 ***(refd)***
Munusamy Vengadasalam v. PP [1987] 1 CLJ 250; [1987] CLJ (Rep) 221 SC ***(refd)***

Natthanan Yoochomsuk & Anor v. Insp Mohd Noor Husri Johari & Ors [2024] 9 CLJ 546 HC ***(refd)***
Peguam Negara Malaysia v. Mkini Dotcom Sdn Bhd & Anor [2021] 3 CLJ 603 FC ***(refd)***
PP v. Samirah Muzaffar & Ors And Another Appeal [2025] 4 MLJ 754 ***(refd)***
Renault SA v. Inokom Corporation Sdn Bhd & Anor And Other Applications [2010] 5 CLJ 32 CA ***(refd)***
Robinson v. Chief Constable of West Yorkshire Police [2018] 2 WLR 595 ***(refd)***
Rookes v. Barnard [1964] AC 1129 ***(refd)***
Roshairee Abd Wahab v. Mejar Mustafa Omar & Ors [1997] 1 CLJ Supp 39; [1997] 1 BLJ 39 HC ***(refd)***
Shaaribuu Setev & Ors v. CIF Inspektor Azilah Hadri (Civil Suit No. 21-120-2007) (Unreported) ***(refd)***
Siti Aisyah v. PP [2019] 7 CLJ 27 CA ***(refd)***
Sivarasa Rasiah v. Badan Peguam Malaysia & Anor [2010] 3 CLJ 507 FC ***(refd)***
Sukhvinder Singh Naldip Singh v. PP & Another Appeal [2014] 5 CLJ 574 CA ***(refd)***
Syed Mohamed Nur Ali v. Weddrin Mojingkin & Ors [2020] 3 CLJ 133 HC ***(refd)***
Tan Sri Norian Mai & Ors v. Chua Tian Chang & Ors [2015] 6 CLJ 1045 CA ***(refd)***
Thayanantha Rao Bala Krishna v. Sjn Muhammad Izwan Izham & Ors [2024] 6 CLJ 940 HC ***(refd)***
Tony Pua Kiam Wee v. Government Of Malaysia & Another Appeal [2020] 1 CLJ 337 FC ***(refd)***
U Television Sdn Bhd & Anor v. Comintel Sdn Bhd [2017] 10 CLJ 580 FC ***(refd)***
Varnava & Ors v. Turkey (Application Nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 And 16073/90, Council of Europe: European Court of Human Rights, 18 September 2009) ***(refd)***
Velasquez Rodriguez v. Honduras (Judgment Of July 29, 1988 Series C No. 4) ***(refd)***
Wong Swee Chin v. PP [1980] CLJU 138; [1980] 1 LNS 138 FC ***(refd)***
Zulkiflee SM Anwar Ulhaque & Anor v. Arikrishna Apparau & Ors [2013] CLJU 1264; [2013] 1 LNS 1264 CA ***(refd)***

Legislation referred to:
Civil Law Act 1956, s. 8(2)
Courts of Judicature Act 1964, ss. 14(1), 25(2), Schedule, para 1
Criminal Procedure Code, ss. 107A, 112, 119, 120
Evidence Act 1950, ss. 15, 33, 73A, 101, 102, 103, 106, 108, 114(g), 145, 157
Federal Constitution, arts. 5(1), (2), 8(1), 10(1)(a), 11(4), (5), 160
Government Proceedings Act 1956, ss. 5, 6, 33(4)
Human Rights Commission of Malaysia Act 1999, ss. 14, 15
Police Act 1967, ss. 3(3), 4, 5, 20(3)
Rules of Court 2012, O. 15 r. 17(1), (2), O. 16 r. 8(1)(a), (b), (c), O. 92 r. 4

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For the defendants - Nurul Farhana Khalid, Zetty Zurina Kamaruddin SFCs, Abdul Hakim Ab Keram, Fariza Amira Azman & Siti Naquiah Mohd Jamel; FCs
Watching brief for the Malaysian Bar - Joshua Wu Kai Ming & Andrew Khoo Chin Hock; M/s P E Lim
Watching brief for SUHAKAM - Marcus Lee Min Lun; M/s Marcus Lee

Reported by Lina E

JUDGMENT

Su Tiang Joo J:

> As a matter of fundamental first principles, in my considered view, it would be a grave travesty of justice if the person who is allegedly responsible for the disappearance of the victim can be heard to assert that the victim has no *locus standi* and should be denied access to even cross over the threshold of the courts of law to seek justice.
>
> It is concomitant with a fair trial with parties constitutionally entitled to the equal protection of the law, that the truth should serve to level the battleground, more so, when an individual takes on the might of the State and, in the process, the shield of privilege, if any, should give way to the test of relevancy.

Introduction

[1] This action concerns the alleged enforced disappearance of the first plaintiff, Koh Keng Joo, and who is also known as Pastor Raymond Koh or Pastor Koh ("PT"), on 13 February 2017. The plaintiffs assert that the disappearance was executed in an organised, coordinated operation by police personnel or persons involving the first to 12th defendants ("D1 to D12") for which the 13th defendant, the Government of Malaysia or the State ("D13") is vicariously liable.

[2] The defendants assert that the second plaintiff, Liew Sow Yoke or Susanna Liew ("P2") who is the wife of the first plaintiff, has no *locus standi* to initiate this suit on behalf of P1, and, in any event, the plaintiffs' action should be dismissed for failure to prove any liability against D1 to D12 and, by reason thereto, D13 should not be made vicariously liable and, thus, the action should be dismissed with costs.

[3] After a trial over 32 days commencing on 6 June 2023 and ending on 8 July 2025, with 21 witnesses called, and upon submissions having been presented in writing by the plaintiffs (E204, E206 and E214), the defendants (E209), and by the *amicus curiae* from the Malaysian Bar (E211), this court had pronounced judgment on 5 November 2025 with broad grounds given. The broad grounds were to be subject to the full grounds of judgment. These are the full grounds.

Parties

[4] P1 is a Malaysian citizen and a Christian pastor. He was last seen by P2 on 13 February 2017 at about 10am and was abducted at about 10.45am and, since then has not been seen or heard from.

[5] P2 was, by order of this court dated 6 June 2023, appointed as the litigation representative to act for and on behalf of P1. This was made pursuant to O. 15 r. 17 and O. 92 r. 4 of the Rules of Court 2012 ("ROC") with the right to conduct the action for and on behalf of P1 with retrospective

effect equivalent to *nunc pro tunc*, and, by way of a further order, that the intitulement of this action be deemed to be so amended with retrospective effect as from the date of filing of this action on 11 February 2020. P2 sues in her personal capacity and on behalf of P1.

[6] The defendants are as below:

(i) the first defendant, Tan Sri Dato' Seri Khalid bin Abu Bakar, was the Inspector General of Police until 4 September 2017 ("D1"), and subsequently replaced by Tan Sri Mohamad Fuzi Harun on 4 September 2017 ("D2");

(ii) Dato' Awaludin Jadid ("D3") was the Principal Assistant Director of the E2 Social Extremism Division of the special branch of D12;

(iii) Datuk Huzir Muhamed ("D4") was the Deputy Director of the Criminal Investigation Department ("CID") of the Intelligence and Operations Division, and was directly in charge of the Special Task Force on Organised Crime ("STAFOC");

(iv) Fadzil Ahmat ("D5") was the head of task force who investigated the disappearance of P1, while also reporting to D4;

(v) Supari Muhammad ("D6") was the investigating officer ("IO") in the task force headed by D5, while also reporting to D4;

(vi) Khor Yi Shuen ("D7") was an Inspector of the Criminal Investigation Department ("CID") and the investigating officer of the disappearance of Amri Che Mat;

(vii) Hazril bin Kamis ("D8") was a Superintendent, heading a special elite police unit under STAFOC and CID;

(viii) Mohamad Shamzaini bin Mohd Daud ("D9") was the special branch officer from Ibu Pejabat Kontinjen Perlis but against whom, the plaintiffs have discontinued their claims, and confirmed by learned counsel for the plaintiffs in open court on 5 November 2025. Accordingly, the plaintiffs' claim against D9 was struck out;

(ix) Saiful Bahari bin Abdul Aziz ("D10") was a special branch operative working on contract with D12 and stationed at Pusat Latihan Polis ("PULAPOL");

(x) the Inspector General of Police appointed pursuant to s. 5 of the Police Act 1967 (Revised 1988) ("D11");

(xi) Polis DiRaja Malaysia or Royal Malaysia Police or "PDRM" established under the Royal Malaysian Police Act 1963, was named as the 12th defendant ("D12"). D12 is a Federal agency of the Government of Malaysia; and

(xii) the 13th defendant ("D13") is the Government of Malaysia, and pursuant to ss. 5 and 6 of the Government Proceedings Act 1956, are alleged to be vicariously liable for the acts and omissions of D1 to D12.

List Of Documents Filed And Witnesses Called

[7] List of documents:

(i) A - bundle of pleadings (encl. 18);

(ii) IDB (A) - common bundle of documents (Part A) (encl. 27);

(iii) IDB (B1-B8) - common bundle of documents (Part B) (vols. 1 to 8); (encl. 32 to 39)

(iv) IDP (1-4) - common bundle of documents (vols. 1 to 4) (encl. 28 to 31);

(v) IDD (1) - the defendants' bundle of documents (encl. 50);

(vi) B1 - the plaintiffs' issues to be tried (encl. 26);

(vii) B2 - the defendants' issues to be tried (encl. 43);

(viii) C1 - statement of agreed facts (encl. 25);

(ix) D1 - the plaintiffs' case summary (encl. 45);

(x) D2 - the defendants' case summary (encl. 41);

(xi) E1 - the plaintiff's list of witnesses (51 witnesses) (encl. 44);

(xii) E2 - the defendants' amended list of witnesses (six witnesses) (encl. 49);

(xiii) F - the defendants' opening statement (encl. 165); and

(xiv) agreed issues to be tried (encl. 201).

[8] Witnesses called:

(i) PW1 Roeshan Celestine Gomez;

(ii) PW2 Jonathan Koh Szu Hao;

(iii) PW3 Sri Ram s/o Gopala Iyer;

(iv) PW4 Susanna Liew Sow Yoke;

(v) PW5 Norhayati binti Mohd Ariffin;

(vi) PW6 Faisol bin Abd Rahman;

(vii) PW7 Annuar bin Ismail;

(viii) PW8 Syed Amri bin Syed Abdul Jalil;

(xiv) PW9 Zamri bin Yahya;

(xv) PW10 Vee Yak a/l Ban Jong;

(xvi) PW11 Abd Rahim bin Uda;

(xvii) DW1 Awaludin bin Jadid;

(xvii) DW2 Inspector Ali Asraf Abu Bakar;

(xix) DW3 Supt Hazril bin Kamis;

(xx) DW4 ASP Khor Yi Shuen;

(xxi) DW5 ASP Khairul Ridzuan bin Khiruddin;

(xxii) DW6 Sergeant Shamzaini Mohd Daud;

(xxiii) DW7 Dato' Sri Asri bin Yusuff;

(xxiv) DW8 DSP Supari bin Muhammad;

(xxv) DW9 ASP Nazeri bin Mohamed; and

(xxvi) DW10 ASP Ahmad Marzuqi bin Ibrahim.

Background Facts

[9] A police report No. Kelana Jaya/1540/2017 was lodged by Roeshan Celestine Gomez ("PW1") on 13 February 2017 who said he witnessed an incident involving four sports utility vehicles ("SUV") vehicles occupied by several masked men surrounding another vehicle and pulling the driver of that vehicle into one of the SUVs. As it turned out, and it is undisputed that the driver who was pulled out was P1.

[10] The abduction was captured on closed-circuit television ("CCTV") of two nearby houses. A recording was obtained by the children of P1 and produced during the trial. It is undisputed by the defendants that the CCTV recording is authentic (E202 NOP p. 3000).

[11] From PW1's eye-witness account which was supported by his contemporaneous police report and the CCTV recording, it can be seen that the car in which P1 was driving was boxed in by three black SUVs, followed by a gold-coloured Toyota Vios, a silver-coloured Proton Waja, and two motorcycles as outriders managing traffic.

[12] The entire operation was done in broad daylight, in a co-ordinated manner and in less than one minute. Most of the people involved were masked and dressed in black military looking outfits from top to bottom. Some were in plain clothes and a person coming out of the Waja was seen recording the entire operation. A man came out of the gold-coloured Toyota Vios and directing PW1 to reverse his car, a Perodua Myvi which he did. Thereafter, the vehicles involved in the abduction were seen leaving together.

[13] D1 was quoted as saying on 20 March 2017, *inter alia*, "The people who abducted Pastor Raymond Koh are obviously very meticulous" (E33 p. 136), and that on the case involving a 31-year-old part-time Uber driver (Lam Chang Nam) who was charged with demanding RM30,000 from Koh's son, Jonathan (PW2) at the Paradigm Mall at 9.46pm on March 6 2017 was not involved in P1's abduction. The document carrying what was said by D1 was classified as a Part B document (E33 pp. 136 and 137) with no challenge made to the accuracy of what D1 was quoted as saying.

[14] The abduction can be seen to professionally and meticulously done by a well-trained team to abduct P1 with the use of a special tactical method of blocking or vehicle intercept. This is a slow speed co-ordinated manoeuvre where three vehicles simultaneously intercept and block the movement of P1's vehicle while he was unaware of the impending enforcement stop, with the abductors having the goal of containment and preventing pursuit.

[15] It is clear from the CCTV recording it was an operation that involved substantial resources, three SUVs, one Waja, one gold-coloured Toyota Vios, and two persons on motorcycles to control and direct traffic, the masked men's outfits complete with balaclavas, with plain clothes individuals present as well. It is indisputable from the testimony of DW8 that surveillance would have been done on P1 for a considerable number of days before the abduction. All these would need substantial resources.

[16] In the period following the abduction, the plaintiffs sought information from the authorities regarding the whereabouts and fate of P1. Various meetings took place between the family and senior police officials, during which updates were provided. According to the plaintiffs, however, no conclusive information was ever disclosed.

[17] At one point, a ransom demand was communicated to the family *via* text message. A person was subsequently arrested and charged in relation to that matter. The plaintiffs say that this development did not shed light on the disappearance and has no relevance to the abduction of P1.

[18] In the years that followed, the plaintiffs continued to pursue clarification and relief through communications with the authorities, including the police and other public bodies. The matter subsequently became the subject of an inquiry by SUHAKAM. The inquiry later issued its findings.

[19] As at the filing of these proceedings on 11 February 2020, the fate and whereabouts of P1 remain unknown.

[20] The plaintiffs allege that the abduction occurred through the acts and omissions of D1 to D12 (save for D9) and that D13 is vicariously responsible.

[21] The defendants deny involvement in the disappearance and take issue with the factual and legal grounds advanced. They contend that the plaintiffs have not established the basis for the reliefs claimed.

Causes Of Action

[22] The plaintiffs grounded their action on the following causes of action as against the following defendants set out hereunder:

(i) as against D1, D2, D3, D4, D8, D10, D11 and D12 - Breach of constitutional rights under arts. 5, 8 and 160 of the Federal Constitution:

(a) breach of art. 5(1): no person shall be deprived of life or personal liberty save in accordance with law;

(b) breach of art. 8(1): equality before the law. Victims of enforced disappearance should have equal protection, access and remedies under the law; and

(c) breach of art. 160: "law" must include principles of natural justice, rule of law and procedural fairness all of which enforced disappearance violates;

(ii) as against D4, D5, D6, D7, D11 and D12 - Breach of statutory duties and in particular, s. 20(3) of the Police Act 1967; ss. 107A, 119 and 120 of the Criminal Procedure Code;

(iii) as against D1, D2, D3, D4, D8, D10, D11 and D12 - Misfeasance in public office;

(iv) as against D1, D2, D3, D4, D7, D8, D10, D11 and D12 - Conspiracy to injure;

(v) as against D4, D5, D6, D7, D11 and D12 - Negligence; and

(vi) vicarious liability to be found against D13.

Locus standi

[23] In their written submissions (E209 para. 30) the defendants challenged the *locus standi* of P2 to sue in the capacity of next friend and kin (representative capacity), nor in her personal capacity. They went on to submit that when I made the order on 6 June 2023 to clothe P1 with *locus standi*, my reliance on O. 15 r. 7(1) and (2) of the Rules of Court 2012 ("ROC") was misconceived as these rules do not apply.

[24] I agree with the plaintiff's submissions in reply (E214) that the assertion by the defendants that I had relied on O. 15 r. 7(1) and (2) of the ROC is not correct.

[25] In fact, I had referred and relied on O. 15 r. 17 of the ROC and para. 2 of the plaintiffs' amended statement of claim (E18 p. 30 and E202 NOP pdf. 45 lines 21 to 23) wherein P2 had pleaded, *inter alia*, that she is

the wife of P1 and brings the action on P1's behalf as next friend and kin/representative capacity as well as in her own personal capacity and on behalf of their three children.

[26] After making reference to the aforesaid pleading, I had made the order on 6 June 2023 pursuant to O. 15 r. 17 of the ROC and the inherent powers of this court pursuant to O. 92 r. 4 of the ROC, and not pursuant to O. 15 r. 7(1) and (2) of the ROC, as submitted by the defendants.

[27] Order 15 r. 17 of the ROC expressly provides that the court may give conduct of any action, inquiry and other proceedings to such person as it thinks fit. And, as pointed out by the plaintiffs, when I referred to this provision, the learned Senior Federal Counsel ("SFC"), Puan Nurul Farhana binti Khalid, had in fact conceded and agreed that this provision is wide enough and can be applied in this case (E202 NOP pdf. 44 paras. 9 to 11).

[28] I also agree with the plaintiffs that with the order having been made by this court on 6 June 2023, this court is *functus officio*, and if the defendants were dissatisfied with the said order of 6 June 2023, they ought to have appealed against it, but they did not. Thus, for them to raise it again in their submissions is without merit.

[29] It would be apposite to add that if a person is held against his will, the law provides a remedy that his next friend or litigation representative can seek recourse by way of an application for a writ *habeas corpus* for the enforcement of the fundamental liberties conferred by Part II of the Federal Constitution ("FC") and in particular art. 5(2) of the FC, and for him to be brought to court to be released. Article 5(2) of the FC is reproduced hereunder:

> (2) Where complaint is made to a High Court or any judge thereof that a person is being unlawfully detained the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and release him.

[30] See also s. 25(2) of the Courts of Judicature Act 1964 and para. 1 of the Schedule which is reproduced hereunder where amongst the additional powers conferred upon the High Court are to issue to person or authority directions, orders or writs of *habeas corpus* and *mandamus* for any purpose:

> ADDITIONAL POWERS OF HIGH COURT
>
> 1. Prerogative writs
>
> **Power to issue to any** person or **authority directions, orders** or writs, including writs of the nature of ***habeas corpus***, ***mandamus***, prohibition, *quo warranto* and *certiorari*, or any others, for the **enforcement of the rights conferred by Part II of the Constitution, or any of them, or for any purpose**.
>
> (emphasis added)

[31] As a matter of fundamental first principles, in my considered view, it would be a grave travesty of justice if the person who is allegedly responsible for the disappearance of the victim can be heard to assert that the victim should be denied access to even cross over the threshold of the courts of law to seek justice.

Agreed Issues To Be Tried

[32] The following are the agreed issues (E201) which have been translated by this court into English as follows:

(i) whether the defendants, or any one or more of them, whether in combination, or in any manner whatsoever, are directly or indirectly responsible for the abduction and/or enforced disappearance of P1;

(ii) whether the defendants have violated the constitutional rights and statutory duties under the relevant laws;

(iii) whether the defendants have committed misfeasance in public office;

(iv) whether the defendants had conspired and combined together with the intention to injure/cause harm to the plaintiffs;

(v) whether the defendants were negligent;

(vi) whether the plaintiffs are entitled to general damages and/or aggravated and/or exemplary damages and/or any other damages or relief as this Honourable Court deems fit; and

(vii) whether D13 is vicariously liable for all or any of the acts of D1 to D12.

Burden Of Proof

[33] Both the parties are in agreement that it is settled law that in Malaysia the burden of proof is governed by ss. 101 to 103 of the Evidence Act 1950. This burden is the burden to adduce evidence, to make out or rebut the claim and may shift from one side to the other according to the weight of the evidence, see the Federal Court authority of *U Television Sdn Bhd & Anor v. Comintel Sdn Bhd* [2017] 10 CLJ 580 para. 35.

[34] The defendants cited *Johara Bi Abdul Kadir Marican v. Lawrence Lam Kwok Fou & Anor* [1980] CLJU 199; [1980] 1 LNS 199; [1981] 1 MLJ 139 at p. 142, and pointed out that the Federal Court in this case agreed with the judicial approach that until and unless the plaintiff had discharged the onus to prove his case on a balance of probabilities, the burden does not shift to the defendants and, no matter what, even if the defendants' case was completely unbelievable, the claim against the defendants, must in the circumstance, be dismissed.

[35] The defendants maintain that the plaintiffs' case is grounded on conjecture rather than proof. They say that unknown individuals carried out the abduction, and there is no evidential nexus to demonstrate that any defendant acted directly, jointly, or indirectly through acquiescence or otherwise, and that the abduction could have been carried out by criminal elements.

[36] The plaintiffs submitted that, however, the approach taken in international human rights cases on enforced disappearances goes further, and cited the following cases to be illustrative of when the burden of proof lies on the State itself:

(i) in *Velasquez Rodriguez v. Honduras* (judgment of July 29, 1988. Series C No 4), it was established that when a person disappears pointing to the involvement of the State and/or its agents, the burden shifts to the State to explain the whereabouts of the disappeared person;

(ii) in *Bamaca-Velasquez v. Guatemala* (judgment of November 25, 2000. Series C No. 70), the Inter-American Court of Human Rights held as follows:

> As this Court has often repeated, in cases of forced disappearance, *the State's defence cannot rely on the impossibility of the plaintiff to present evidence in the proceedings since, in such cases, it is the State that controls the means to clarify the facts that have occurred in its jurisdiction and, therefore, in practice, it is necessary to rely on the cooperation of the State itself in order to obtain the required evidence*.
>
> ... In cases such as forced disappearance – and others ... – *the State has better possibilities of assuming the function of proving what it denies, than the individual to prove what he affirms*.
>
> (emphasis added)

(iii) in *Godinez Cruz v. Honduras* (judgment of January 20, 1989. Series C No. 5), the Inter-American Court of Human Rights held:

> 141. In contrast to domestic criminal law, in proceedings to determine human rights violations **the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation**.
>
> 142. **The State controls the means to verify acts occurring within its territory**. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State.
>
> (emphasis added)

(iv) in *Varnava & Ors v. Turkey* (Application nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, Council of Europe: European Court of Human Rights, 18 September 2009), the European Court of Human Rights held:

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> 184. As a logical development of this approach, *in the situation where persons are found injured or dead, or who have disappeared, in an area within the exclusive control of the authorities of the State and there is prima facie evidence that the State may be involved, the burden of proof may also shift to the Government since the events in issue may lie wholly, or in large part, within the exclusive knowledge of the authorities. If they then fail to disclose crucial documents to enable the Court to establish the facts or otherwise provide a satisfactory and convincing explanation, strong inferences may be drawn.*
>
> (emphasis added)

B

(v) In *Bleier v. Uruguay* (Communication No. R7/30, UN. Doc. Supp. No. 40 (A/37/40) at 130 (1982)), the Human Rights Committee of the United Nations held:

C

> 13.3 With regard to the burden of proof, this cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information ... *In cases where the author has submitted to the Committee allegations supported by substantial witness testimony, as in this case, and where further clarification of the case depends on information exclusively in the hands of the State party, the Committee may consider such allegations as substantiated in the absence of satisfactory evidence and explanations to the contrary submitted by the State party.*
>
> (emphasis added)

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[37] The defendants submitted (E209 para. 335) that the above international human rights authorities may be persuasive in public-law contexts but cannot displace the statutory regime of the Evidence Act 1950 or the domestic civil standard. They submitted that in Malaysian civil procedure, any shifting of the evidential onus arises only where the plaintiffs' evidence crosses the *prima facie* threshold on the facts of the case. It is not engaged merely because a person is missing or because inquiries were complex.

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[38] However, the Federal Court and the Court of Appeal have judicially recognised decisions of the European Court of Human Rights ("ECtHR") in the following cases:

(i) in *Peguam Negara Malaysia v. Mkini Dotcom Sdn Bhd & Anor* [2021] 3 CLJ 603; [2021] 2 MLJ 652 at paras. 29, and 89 to 96, the majority of the Federal Court cited *Delfi AS v. Estonia (Application No 64569/09) (2015) (ECtHR)*, a decision of the ECtHR on defamation, which held that the case of *Delfi* which is a decision of the Grand Chamber of the European Court of Human Rights, to be particularly instructive, and applied the decision in *Delfi* which held that the applicant company had been able to exercise a substantial degree of control over the readers'

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comments, and, hence, it was in a position to predict the nature of the comments on a particular article, and was, therefore, liable to promptly take technical or manual measures to prevent defamatory statements from being made public; and

(ii) in *Datuk Seri Khalid Abu Bakar & Ors v. N Indra P Nallathamby & Another Appeal* [2014] 9 CLJ 15; [2015] 1 MLJ 353 paras. 50 and 51 ("*Kugan*'s case"), the Court of Appeal looked at art. 2 of the European HR Convention on right to life and English decisions in determining that the said right imposes a duty on the Government to initiate an effective public investigation by an independent official body into any custodial death.

[39] In the circumstances, whilst I accept that the international human rights authorities cited by the plaintiffs are not binding on this court, they are persuasive and can be instructive.

[40] The defendants submitted that in the instant case (E209 para. 59), unless the plaintiffs first make out a *prima facie* case on the following essential ingredients, no evidential burden shifts to the State; the essential ingredients being:

(i) deprivation of liberty;

(ii) attribution to the State (whether by State agents themselves or by private actors acting with State authorisation, support, or acquiescence);

(iii) a refusal to acknowledge the deprivation or a concealment of fate or whereabouts; and

(iv) causation with resulting loss.

[41] From the submissions presented, it is indisputable, and conceded by the defendants, that P1 has been deprived of his liberty, save that – the plaintiffs submitted that the deprivation was done by the State, whereas the defendants deny the same and submitted that it could be due to criminal elements, and that investigations are still ongoing on the whereabouts of P1. Therefore, it logically follows, that the defendants deny they have concealed the fate or the whereabouts of P1.

[42] Thus, it is for this court to ascertain from the evidence led whether the deprivation of liberty of P1 pointed to the involvement of the State or in the words of the defendants, whether the deprivation of liberty of P1 is attributed to the State (whether by State agents themselves or by private actors acting with State authorisation, support, or acquiescence), and if so, the evidential burden would shift to the defendants to prove otherwise.

A **Reliance On SUHAKAM And Special Task Force ("STF") Findings**

[43] It is indisputable that the Human Rights Commission of Malaysia ("SUHAKAM") had conducted an inquiry into the disappearances of P1, Amri Che Mat, and Joshua and Ruth Hilmi. The notes of proceedings and report of the SUHAKAM inquiry into the disappearance of P1 (E32 pp. 1 to 95) and Amri Che Mat (E36 pp. 3392 to 3492) were classified as Part B documents, *ie*, agreed as to authenticity but not as to contents.

[44] It is also indisputable that the Government of Malaysia (D13) at a cabinet meeting of 8 May 2019 decided that a special task force ("STF") is to be set up to investigate the SUHAKAM findings. The STF was set up and conducted an inquiry. Its findings are contained in a STF report. During the course of trial, the plaintiffs sought for it to be produced. The defendants objected.

[45] The plaintiffs then filed a discovery application (E93) to have the STF report produced and, to be used as evidence at the trial.

[46] After an exchange of affidavits with written submissions filed, and after hearing parties, I allowed the application on 15 August 2024. The grounds for my decision is reported in *Koh Keng Joo & Anor v. Tan Sri Dato' Seri Khalid Abu Bakar & Ors* [2025] 1 CLJ 438. The defendants appealed against this decision. In the meanwhile, the trial proceeded with the STF report being produced and marked as IDB (B9) with it classified as a Part B document.

[47] In their closing written submissions, the defendants asserted that the plaintiffs had asked this court to adopt both the findings of the SUHAKAM and the STF inquiries. The plaintiffs in their submissions in reply (E214 paras. 19 to 22) asserted that this is not true. Briefly, the plaintiffs' position is that:

(i) they did not submit that the findings and/or recommendations by SUHAKAM and the STF are binding or should be adopted by this Honourable Court;

(ii) the evidence led during these two inquiries would be relevant as they deal with the same issues before this Honourable Court which is dealing with the same subject matter which is the abduction of both P1 and Amri Che Mat; and

(iii) the evidence of these two inquiries provides corroborative support to the direct and circumstantial evidence led during the trial of this action.

[48] I agree with the plaintiffs that, although the evidence led and findings made are not binding on this court, the evidence led during the SUHAKAM inquiry is relevant pursuant to s. 33 of the Evidence Act 1950 as the parties

thereto being the families of P1 and Amri Che Mat, and the witnesses that were called during the SUHAKAM inquiry are similar to the witnesses that were called in these proceedings, and that the same issues and facts are ventilated.

[49] I also agree with the plaintiffs that the plaintiffs' witnesses have confirmed what they saw, heard and perceived and that is the basis in which those evidence, which is reflected in the notes of proceedings of the SUHAKAM inquiry is adduced before this court. I find the following submissions made by the plaintiffs to be compelling:

(i) that in an abduction case against the State and/or its agents, such as the present case, the plaintiffs and the plaintiffs' witnesses do not have the resources or equal access to the evidence;

(ii) in such a case, the plaintiffs do not have direct evidence to show that State agents are involved in the disappearances and must rely on evidence which they saw, heard and perceived of State agents having said in any forum, police station or the press as well as circumstantial evidence;

(iii) the practice of abduction often involves secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible;

(iv) therefore, under these circumstances, the best evidence that the plaintiffs and the plaintiffs' witnesses can bring before this court is what they heard and perceived of the State's agents having said and done. And, if it was on oath and corroborated by any other document like a letter or notes of proceedings, it only adds more weight by way of corroboration of the evidence given by the plaintiffs' witnesses;

(v) that they had put to the witnesses in the SUHAKAM inquiry who had taken the oath to tell the truth before this court, whether what they said at SUHAKAM was accurate, true and it is their evidence, and once they confirmed that to be so, that would be their evidence;

(vi) such a procedure was adopted in this action, to save time in this lengthy trial so that they need not have to repeat every single question that they had already answered previously on oath. This would be admissible under s. 73A of the Evidence Act 1950 which provides that:

> (1) Notwithstanding anything contained in this Chapter, in any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied:

A (a) if the maker of the statement either:

(i) had personal knowledge of the matters dealt with by the statement; or

(ii) ...

B (b) **if the maker of the statement is called as a witness in the proceedings**:

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is beyond the seas and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.

C (emphasis added)

D **[50]** Further, under s. 157 of the Evidence Act 1950 former statements made by a witness is admissible to corroborate his testimony, see also *Lim Guan Eng v. PP* [2000] 2 CLJ 541; [2000] 2 MLJ 577 at p. 597.

[51] The taking of evidence in the SUHAKAM inquiry are regulated by ss. 14 and 15 of the Human Rights Commission of Malaysia Act 1999 and the decisions made are a matter of public record. Thus, its decisions are admissible as part of a public document.

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[52] The same goes for the STF report, and I maintain, which I am obliged to do, my rulings in my decision of 15 August 2024 (see *Koh Keng Joo & Anor v. Tan Sri Dato' Seri Khalid Abu Bakar & Ors* [2025] 1 CLJ 438) where I had held that:

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(4) whilst the findings of SUHAKAM and the STF may not be binding on this court, subject to evaluation by this court and the weight to be attached, *the evidence led during the SUHAKAM inquiry and the STF report, especially those that required recollection of what was seen, heard and felt would be useful because they would be more contemporaneous in time*. They could, in any event, be subjected to challenge and the procedural safeguards contained in the *Evidence Act 1950* ('EA') for purposes of admissibility and, the weight to be given thereto. The findings, although not binding, may be persuasive. It is not uncommon for courts to adopt findings made by sources whose decisions are not binding. Therefore, the evidence and the findings on the very issue under consideration by this court that of the disappearance of P1 would be desirable (paras. 48-50)

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(5) The STF was established by the Cabinet. That it was an administrative decision made by the Cabinet would be sufficient for it to come under the wide ambit of authority conferred by art. 39 of the FC. Applying the presumption in *s. 114(e) of the Evidence Act 1950* which flowed from the maxim *omnia praesumunturrite esse* acta (that in the absence of evidence to the contrary, it is presumed that official acts have been done in accordance with all relevant technicalities), it follows that the STF report prepared by

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> the STF appointed by the Cabinet was *prima facie* a public document. It would thus be relevant pursuant to *sections 35 and 74 of the Evidence Act 1950* (paras 62 & 63).
>
> (emphasis added)

[53] The defendants submitted that the plaintiffs' failure to cross-examine Sergeant Shamzaini Mohd Daud (D9/DW6) on his denial of the revelations that he has made is fatal with reliance placed on the rule in *Browne v. Dunn* (1893) 6 R 67 and which has been adopted in Malaysia (see *Wong Swee Chin v. PP* [1980] CLJU 138; [1980] 1 LNS 138; [1981] 1 MLJ 212; *Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors & Another Case* [1995] 3 CLJ 639; [1952] 2 MLJ 770. I disagree. From my analysis undertaken of PW5's version with that of D9/DW6's version, which will be discussed in detail later, I find PW5's version to be more probative and to cross-examine DW6, given the circumstances, would be counter-productive and take up unnecessary court's time. In fact, D9/DW6's revelations to PW5 ought to be applauded.

[54] And, as pointed out by the plaintiffs in their submissions in reply (E214 paras. 62 and 63), they did cross-examine D9/DW6 (E202 NOP pp. 2721 to 2724), and that they were aware of the delicate position that DW6 was in and the risk undertaken by DW6 in making the revelations and who alluded to him being subjected to pressure by his colleagues. I find the reasons given by the plaintiffs therein to be compelling.

[55] Further, they had in abundance of caution, called the makers of the STF report to court to satisfy that it is their report. Both the Chairman of the STF, Datuk Abd Rahim bin Uda (PW11) and one of the members of the STF, CP Zamri Yahya (PW9) were called as witnesses and who confirmed that it is their report. Once the maker has been called, then it is admissible pursuant to s. 73A of the Evidence Act 1950 (*supra*).

[56] In *Gopinathan Subramaniam v. Timbalan Menteri Dalam Negeri & Ors* [1999] 7 CLJ 558; [2000] 1 MLJ 65 at 73F and 74H-I, the High Court held that:

> As the report and the certificate were prepared by public servants in the discharge of their official duties they are public documents as defined in s. 74 of the Evidence Act 1950 ('s. 74').
>
> **A public document is therefore *prima facie* proof of its contents but may be rebutted by other evidence** (see *Kumar Digambar Singh v. Ahmed Sayeed Khan* 1914 AIR PC 11).
>
> (emphasis added)

[57] As further pointed out by the plaintiffs, the defendants have themselves pleaded that the STF had been formed by the Ministry of Home Affairs to investigate the disappearance of P1 following from the findings of SUHAKAM (see para. 12(j) of their statement of defence (E18 p. 55). Such a plea underscores the relevancy and, hence, the admissibility of the STF report.

Issue No 1 - Whether The Defendants, Or Any One Or More Of Them, Whether In Combination, Or In Any Manner Whatsoever, Are Directly Or Indirectly Responsible For The Abduction And/Or Enforced Disappearance Of P1

Court's Analysis Of The Evidence Led By The Plaintiffs In Support

[58] In summary, the court had carried out an analysis of amongst others, the following pieces of evidence:

(i) eye-witness account of Roeshan Celestine Gomez (PW1) who testified to what he saw of the abduction, and which I find to be credible;

(ii) the CCTV recording of the abduction – the testimony of PW1 was corroborated by a CCTV recording with the police investigating officer (D6/DW8) saying that it shows a true account of what transpired. This CCTV recording is an agreed document, with learned SFC conceding that the defendants' witness DSP Supari (D6/DW8), who was the investigating officer ("IO") having testified that it was authentic;

(iii) the gold-coloured Toyota Vios PFC 1623 traced to the ownership of Saiful Bahari (D10), an operative, working for the special branch of PDRM (D12), and based in the Pusat Latihan Polis ("PULAPOL"), and which was seen at the abduction site of both P1 and Amri Che Mat. This critical piece of evidence is relevant under the provision of similar fact evidence under s. 15 of the Evidence Act 1950;

(iv) Saiful Bahari (D10), an operative of the special branch of D12, despite having entered appearance through the AGO, did not turn up in court, to answer the allegations against him that his vehicle the gold-coloured Toyota Vios PFC 1623 and by extension, he himself, was at the site of the abduction. Thus, the allegations are deemed to be proven;

(v) the immediate reaction of Inspector Ali Asrar (DW2) who took PW1's statement on PW1's eyewitness account of the incident, that it has the characteristics of a police operation (see s. 114 of the Evidence Act 1950 where the court may presume existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events and human conduct), and who confirmed PW1's testimony that he did check to see whether it was a police operation, lends significant evidential weight to the plaintiffs' contention that the abduction was effected through means, methods and characteristics of an abduction done by the police. This is corroborated by D3/DW1 that the method used during the abduction was a tactic used by police officers during training;

(vi) the evidence from the CCTV recording points to it being a police operation due to the fact that measures were taken during the abduction to ensure public safety with the accompanying motorcycles and the man from the gold-coloured Toyota Vios coming out to prevent members of the public from getting close to the abduction site;

(vii) Norhayati binti Mohd Ariffin's (PW5) sworn testimony on her meeting with Mohd Shamzaini Mohd Daud (D9/DW6) on 12 May 2018 and DW6's revelation to her of a gold-coloured Toyota Vios, and the involvement of: (i) D3/DW1 who headed the special branch E2 Division in Bukit Aman (the Headquarters of D12), (ii) one Razman Ramli who headed the special branch E2 Division of Perlis, and (iii) one police officer named Azam Azahari who was together with the owner of the Toyota Vios when they abducted Amri; and that team that abducted Amri Che Mat was the same that abducted P1. PW5's testimony is supported by:

(a) contemporaneous notes made by her (E38 pp. 7327 to 7329);

(b) her contemporaneous disclosure to a third party (Mohd Aizat bin Zahid who was called as witness in the *Suhakam* inquiry of Amri Che Mat as IW14 and with extensive references made to him in the SUHAKAM inquiry on P1 at E32 pp. 54, 59, 69, 71, 72 and 83) *vide* telecommunications *via* phone calls, text messages *vide* Telegram and WhatsApp (E38 pp. 7321 to 7326);

(c) her contemporaneous third police report lodged on 15 May 2018 (E38 pp. 7314 to 7315); and

(d) her contemporaneous cautioned s. 112 of the CPC statement of 15 May 2018 (E38 pp. 7316 to 7320) detailing what was revealed to her by DW6 complete with the number of the Toyota Vios and the names of the police officers implicated.

(viii) PW5 in her cautioned statement said amongst others, in its original language as follows:

> (1) Pada malam 12hb Mei 2018, lebih kurang pukul 10:30 malam, ada seorang ketuk pintu depart rumah saya di (xxxxx (alamat rumah)). Bila saya buka pintu, saya nampak seorang lelaki Melayu berpakaian biasa berdiri di sana. Dia memaklumkan kepada saya: Ini pasal suami puan". Saya tanya jika dia polis, dan dia kata: "Ya, saya polis, tapi tak boleh cakap sini." Dia agak berhati-hati. Oleh itu, saya mintanya untuk mengalih motorsikalnya supaya tidak dapat dilihat dari jalanraya, dan saya minta dia naik ke anjung (balcony) rumah saya di tingkat pertama. Dia naik ikut anak tangga luar ke anjung tersebut yang tidak dipasang lampu.
>
> ....

A (3) Sarjan Shamzaini memberitahu saya dia tahu siapa bertanggungjawab menghilangkan Amri, dan sekarang ini, dia kata: 'saya nak mengakulah, dengan kerajaan baru mungkin kes ini akan terbongkar, saya berani cakap, saya tak nak bersubahat, tak nak dosa'.

B (4) Beliau mendakwa bahawa sebelum Amri hilang, dia sudah dipantau oleh pihak polis, di bawah arahan pegawai atasannya ASP Razman. Beliau mendakwa semua laporan risikan hasil pantauan ini dihantar ke Bukit Aman, iaitu kepada Awaludin Jadid [D3], Cawangan Khas Bukit Aman.

C (6) Bila saya tanya mengapa Amri diambil, Sarjan Shamzaini ini mendakwa "Kerana Syiah Forex". Dia mengulas bahawa sebelum ini, pihak polis Perlis dan ASP Razman bercadang untuk tangkap Amri secara rasmi kerana Syiah dan Forex (atas dakwaan kononnya Amri berniaga tanpa berdaftar dengan Bank Negara). Tetapi, mengikut Sarjan Shamzaini, "Bukit Aman buat secara kasar dan lepas itu, mereka meninggalkan kereta Amri di
D Bukit Chabang secara tak dirancang'.

(7) Bila saya tanya siapa di Bukit Aman yang beri arahan, beliau mendakwa yang ambil Amri ialah Cawangan Khas di bawah Awaludin dan IGP Khalid masa itu tahu tentang hal ini.

E (8) Dia mengesahkan bahawa Toyota Vios PFC 1623 yang dilihat dekat dengan rumah kami di Kampung Padang Behor dan direkodkan oleh seorang saksi sehari-hari dua sebelum kehilangan suami saya memang terlibat juga dalam operasi mengambil suami saya.

F (9) Berhubung dengan Toyota Vios ini, Sarjan Shamzaini mendakwa seorang pegawai polis bernama Azam Azahari ada bersama pemilik kereta tersebut semasa operasi mengambil Amri pada malam 24hb November 2016. Dia juga mendakwa bahawa Inspektor Khor telah diarahkan memberi keterangan tak betul mengenai kereta Toyota Vios ini di Inkuiri SUHAKAM. Dia
G kata polis sudah berbincang apa nak jawab jika cakap tentang kereta itu.

(10) Setahu saya, pada 2hb dan 3hb April 2018 semasa memberi keterangan bersumpah, Inspektor Khor telah mendakwa Toyota Vios ini tiada kaitan dengan kereta yang dilihat oleh saksi bernama Vee Yak dekat rumah saya.

H

(11) Sarjan Shamzaini mendakwa ada pegawai-pegawai kanan di Perlis yang sudah tahu mengenai penglibatan Bukit Aman dalam tindakan menghilangkan Amri. Dia menyebut nama Ketua Polis Perlis pada masa itu, iaitu Datuk Ab Rashid, dan juga seorang bernama "Mat Ali", yang dia memaklumkan ialah
I bekas Ketua Cawangan Khas Perlis yang sudah pencen.

(12) Sarjan Shamzaini mendakwa pihak Polis Perlis tidak tahu mana Amri berada sekarang dan sama ada Amri hidup atau mati. Dia kata tiada siapa buka mulut.

(13) Apabila saya membangkitkan kes penculikan Pastor Raymond Koh, beliau mendakwa bahawa "team" yang ambil Amri sama dengan "team" yang ambil Raymond Koh. Apabila saya tanya mengapa Pastor Raymond diambil, beliau kata kerana Pastor Raymond Koh kononnya memurtadkan orang Muslim.

(14) Sarjan Shamzaini mendakwa bahawa semasa perbincangan dengan pasukannya, dia sudah meluahkan rasa kurang senangnya kepada pegawai atasannya ASP Razman: "Abang Man, benda ini tak betul".

(15) Sarjan ini tidak mahu identitinya diketahui orang lain ...

(16) Sarjan Shamzaini meninggalkan rumah saya lebih-kurang pada pukul 12:50 pagi. Perjumpaan kami lebih kurang 2 jam. Anak perempuan saya bersama saya sepanjang perjumpaan ini.

(ix) PW5's testimony is, thus, to be preferred over that of the subsequent denial of D9/DW6, a police personnel who admitted he has never ever met PW5, a Malay Muslim lady before, and who said he went to see PW5 for the first time, in the middle of the night for close to two and a half hours, to merely ask to rent a workshop said to be owned by Perlis Hope;

(x) PW5's statement when assessed together with other strands of evidence in the form of the professional nature of the abduction, the Toyota Vios link to the operative in special branch of D12, and the SUHAKAM and STF findings, buttresses the plaintiffs' narrative on a balance of probabilities that a specific unit within the special branch of PDRM (D12) headed by D3, with the knowledge of D1 and D11, was involved. Wherefore, I reject the 13 points marshalled by the defendants in their written submissions against PW5's testimony (E202 pp. 48 to 63);

(xi) Vee Yak a/l Ban Jong's ("DW10") testimony having seen a gold-coloured Toyota Vios PFC 1623 in the area near Amri Che Mat's house for three days prior to Amri's disappearance;

(xii) the identification of the gold-coloured Toyota Vios PFC 1623 as belonging to Saiful Bahari bin Abd Aziz (D10) of Blok L8-404, Pandan Jaya, 55100 Kuala Lumpur, was not disclosed during the police's initial investigations but only surfaced during the SUHAKAM inquiry;

(xiii) it is evident that the CCTV recording captured the gold-coloured Toyota Vios, the existence and provenance of which, were known to police personnel early in the investigation. Yet, this critical information was not disclosed nor actively pursued as a central

investigative lead. This omission is significant. The failure to address a lead that could reasonably have furthered the investigation supports the inference that the authorities wished to avoid inquiry into a vehicle tied to an operative of special branch which is a division of PDRM (D12);

(xiv) I find the explanation given by the defendants in their closing submissions, that the aforesaid information on the Toyota Vios was not given early because it was part of information contained in the investigation papers and, thus, confidential, to be self-serving, contrived and an afterthought. This is because Inspector Khor Yi Shuen (now ASP) who is D7 (DW4) confirmed under cross-examination, that during the SUHAKAM inquiry when asked why he did not disclose the information earlier he said it was to do with it involving an officer from the special branch (E32 pp. 6510 to 6522). The logical inference of a cover-up is obvious. In his words in Bahasa Melayu he said as follows:

> Saya tidak diarahkan secara bertulis tetapi saya difahamkan maklumat ini di bawah classified category sebab melibatkan pegawai SB (Special branch).

(xv) although the SUHAKAM findings are not binding on this court (see also *Dato' Seri Anwar Ibrahim v. PP* [2014] 5 CLJ 679; [2014] MLJU 1876; *Ahli-ahli Suruhanjaya Yang Membentuk Suruhanjaya Siasatan Mengenai Rakaman Klip Video Yang Mengandungi Imej Seorang Yang Dikatakan Peguambela Dan Peguamcara Berbual Melalui Telefon Mengenai Urusan Pelantikan Hakim-Hakim v. Tun Dato' Seri Ahmad Fairuz Dato' Sheikh Abdul Halim & Other Appeals* [2012] 1 CLJ 805; [2011] 6 MLJ 490, they are persuasive as a number of the witnesses called to testify were also called before this court, and pursuant to ss. 145 and 157 of the Evidence Act 1950, their former statements may be relied upon to challenge or to corroborate later testimony of the same fact. The common witnesses in both the SUHAKAM inquiry and this case are:

(a) Roeshan Celestine Gomez (PW1);

(b) Jonathan Koh Szu Hao (PW2);

(c) Sri Ram s/o Gopala Iyer (PW3)

(d) Susanna Liew Sow Yoke (P2/PW4);

(e) Insp Ali Asrar Abu Bakar (DW2);

(f) Supt Hazril bin Kamis (D8/DW3);

(g) Dato' Asri bin Yusoff (DW7);

(h) DSP Supari bin Muhammad (D6/DW8); and

(i) ASP Nazeri bin Mohamad (DW9);

(xvi) evidence adduced through Dato' Sri Zamri bin Yahya (PW9) and Datuk Abd Rahim bin Uda (PW11) confirmed that the SUHAKAM and the STF findings noted significant operational similarities between the disappearances of P1 and Amri Che Mat, and, at the risk of repetition, although the findings are not binding, they provide persuasive corroboration, as they are aligned with the evidence led during the trial;

(xvii) the investigation team on the abduction of P1 includes D5 and D6 under the supervision of DCP Huzir Mohamed (D4);

(xviii) distraction came in the form of the charging of one Lam Chang Nam despite D1 and D6 (DW8) having said that Lam Chang Nam has nothing to do with the abduction of P1, led to the SUHAKAM inquiry being suspended. The timing of this event is troubling. The bringing of an extortion as opposed to an abduction charge (without *prima facie* evidence against Lam Chang Nam) despite an earlier investigative assessment to the contrary, supports the plaintiffs' submission that it was done with the ulterior motive to halt the SUHAKAM inquiry, and to suppress discovery of material facts;

(xix) there is another distraction in the form of recovered items from one Fauzi who was shot dead by police and who was alleged to head the group that abducted P1.

There were troubling pieces of evidence whereby the seizure and handover forms ("borang menyerah barang kes") (exhs. D3 and D4) of lists of items recovered at the scene of where Fauzi was shot dead by the police at Pengkalan Hulu, were belatedly tendered during the trial, and which carry suspicious discrepancies in handwriting despite the assertion that they were made just five minutes apart and at the same place, and thus, in my considered view have minimal probative value. The allegedly recovered items were said to include printed photographs of the condominium where P1 resides, the car that P1 drove and a picture of a man believed to be that of P1 (E39 pdf p. 32) leading the plaintiffs to submit with force that these items were planted to draw away attention from involvement by the State; and

(xx) there is also the lack of explanation, beyond a *ipse dixit* bereft of particulars, that "investigations are still ongoing" to explain the neglect, failure and refusal to diligently act on the findings of SUHAKAM which were supported by the STF in their report.

Rival Contentions

[59] Against the aforesaid evidence, I now deal with the rival contentions of the plaintiffs and the defendants.

[60] The plaintiffs contend that the abduction of P1 on 13 February 2017 was not an isolated criminal act, but a co-ordinated and professional operation undertaken by or with the involvement, support, consent or acquiescence of State agents including the defendants. They rely on direct and circumstantial evidence, together with subsequent conduct of the authorities.

The Abduction And Its Characteristics

[61] The plaintiffs say that the abduction was captured *via* CCTV and later assembled into a composite sequence. It depicts multiple vehicles boxing in P1's car, masked men in black, and motorcycles regulating traffic before the vehicles departed in convoy. The plaintiffs maintain that the manner, speed, and precision of execution demonstrate a trained operational unit characteristic of police-style operations rather than ordinary criminals. They highlight that similar *modus operandi* was observed in the video of abduction of the Sultan of Kelantan (E33 p. 2932), noted by P2 (PW4), who testified that both involved SUVs, masked operatives, seizure of the driver's position, and contemporaneous recording of the operation.

[62] PW1 similarly described the incident to DW2, who commented at the scene that the *modus operandi* appeared to reflect a police operation, being executed in broad daylight, accompanied by active video recording, and carried out professionally. PW1 testified that DW2 made calls to check if any official operation was being conducted at the material time.

Police Knowledge And Involvement

[63] The plaintiffs submitted that police knowledge is evident. The IOs, were DSP Supari (D6/DW8) and SAC Fadzil Ahmat (D5), and DW8 acknowledged that he briefed the then-inspector General of Police, ("IGP") (D1) shortly after the abduction. D1 publicly stated that one Lam Chang Nam ("Lam") was not involved in the abduction, and this is consistent with D6's own assessment following investigations.

[64] The plaintiffs contend this demonstrates early knowledge on the part of senior police officers as to the true perpetrators. They say that if police already knew Lam was uninvolved, it invites the logical inference that police knew, or had means of knowing, who was involved.

Intervention In SUHAKAM Inquiry And Alleged Suppression

[65] It is the plaintiffs' case that Lam's subsequent charging was undertaken not to pursue genuine prosecution, but to halt the ongoing SUHAKAM inquiry. D6/DW8 himself confirmed that there was no evidence linking Lam to the abduction, yet the charge proceeded, later resulting in discharge/acquittal.

[66] The plaintiffs submitted that the chain of events:

(i) the charge;

(ii) the notification to stop SUHAKAM inquiry; and

(iii) ultimate discharge, points to an attempt to suppress information and obstruct independent scrutiny. They further submitted that when the *prima facie* evidence is viewed holistically, senior police officers knew what transpired, and acted directly or indirectly to conceal the truth.

Direct And Indirect Police Responsibility

[67] The plaintiffs submit that on the evidence, the abduction was committed by multiple police officers including DCP Dato' Awaludin (D3), CP Dato' Huzir Mohamed (D4), Saiful Bahari bin Abdul Aziz (D1), DSP Azam Azahari, Supt Hazril bin Kamis (D8) and others unknown to the plaintiffs but "known to the named police" who carried out the abduction. Other defendants, aware of the abduction, are said to have consented to or acquiesced in it, thereby bearing joint responsibility.

[68] The plaintiffs relies on the definition of "enforced disappearance" in the International Convention for the Protection of All Persons from Enforced Disappearance ("ICPPED") which is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State. They contend that the refusal to disclose the whereabouts and fate of P1 completes the elements of enforced disappearance.

Burden Of Proof

[69] The plaintiffs submitted that once a *prima facie* case is made out, the burden shifts to the defendants to explain that they were not involved, with reliance placed on ss. 102 and/or 106 of the Evidence Act 1950. They asserted that the State is best positioned, and uniquely resourced, to explain the fate of P1. The defendants' silence or failure to provide satisfactory explanation, they say, supports an adverse inference.

[70] The defendants however deny any direct or indirect responsibility for P1's disappearance. They submit that P1's case rests on speculation, inference-stacking, conjecture and inadmissible or unreliable material.

No Proof Linking Police To The Abduction

[71] The defendants submitted that although the CCTV footage confirms the abduction, it does not identify the perpetrators as police officers or State agents. They submitted there were no police insignia, official markings, or identifiable personnel shown. They further stressed that professionalism in execution does not equate to State responsibility as criminal syndicates are equally capable of coordinated operations.

A Testimony Of Inspector Ali Asraf Abu Bakar

[72] The defendants submitted that the plaintiffs mischaracterised the evidence of Insp Ali Asraf (DW2). They submitted that although DW2 initially remarked that the operation appeared to resemble a police operation, he subsequently clarified that this was only his impression and not
B a firm conclusion. On verification made, he received official confirmation that no police operation was carried out at the relevant time. The defendants, therefore, submitted that his testimony, taken in full, negates rather than supports State involvement.

C Evidence Against Lam Chang Nam

[73] The defendants submitted that Lam's involvement in the abduction was investigated by DSP Supari (D6), who concluded that Lam had no connection to the incident. Lam was prosecuted for extortion, convicted, and fined; but not for abduction. The defendants argue that the prosecution and
D subsequent sentence demonstrate lawful action, not suppression; as decisions to charge are made by the Deputy Public Prosecutor, not the police. Accordingly, the chain of events does not support inference of State involvement.

Evidential Principles

E

[74] The defendants submitted that the plaintiffs bear the burden of proof under ss. 101, 102 and 103 of the Evidence Act 1950; the evidence must show a reasonable and compelling inference of State involvement, and not mere suspicion. They rely on appellate authorities that findings drawn from circumstantial evidence must flow logically from established primary facts
F and cannot rest on mere surmise, citing *Sukhvinder Singh Naldip Singh v. PP & Another Appeal* [2014] 5 CLJ 574; *PP v. Samirah Muzaffar & Ors And Another Appeal* [2025] 4 MLJ 754, and *Mohd Isa Abdul Samad v. PP* [2025] 3 MLJ 659 which followed the Indian Supreme Court decision of *Maharashtra State Board Of Secondary & Higher Secondary Education v. KS Gandhi* [1991] 2 SCC 716.

G SUHAKAM Findings

[75] The defendants contend that the SUHAKAM findings are not binding and hold limited probative value. They submit that the plaintiffs' reliance on newspaper reports is similarly defective, as authors were not called,
H rendering the material inadmissible hearsay.

Overall

[76] The defendants maintained that the plaintiffs' case is grounded in conjecture rather than proof. They say that unknown individuals carried out the abduction, and there is no evidential nexus to demonstrate that any
I defendant acted directly, jointly, or indirectly through acquiescence or otherwise.

Court's Analysis And Findings

[77] Before going into the analysis, I acknowledge and accept the defendants' submissions that until Malaysia is a party or signatory to ICCPED and that it has been given effect to by domestic legislation, it is not binding in Malaysia. See *Bato Bagi & Ors v. Kerajaan Negeri Sarawak & Another Appeal* [2011] 8 CLJ 766; [2011] 6 MLJ 297 para. 180; *Airasia Bhd v. Rafizah Shima Mohamed Aris* [2015] 2 CLJ 510; [2014] 5 MLJ 318 para. 41.

[78] However, the defendants agree that liability will arise where the deprivation of liberty is carried out by State agents or by private actors with the State's authorisation, support or acquiescence, and is followed by concealment or a refusal to acknowledge, and that is a fact-intensive inquiry that must be proved on the balance of probabilities under Malaysian evidence law.

[79] I agree with the plaintiffs that the reliance by the defendants upon *Sukhvinder* and *Samirah* is not appropriate. These cases are to do with the burden of proof in a criminal trial where reliance of circumstantial evidence must reach the standard of beyond reasonable doubt.

[80] However, reliance on the Indian Supreme Court authority of *Maharashtra v. KS Gandhi* is appropriate save that when this case is read in totality and carefully, the *ratio decidendi* is that the rules applicable to circumstantial evidence in criminal cases would not apply in civil cases. Instead, the ordinary rules governing civil cases on a balance of probabilities will continue to apply.

[81] The central question is whether, on a balance of probabilities, any of D1 to D12 were directly or indirectly involved in the abduction and/or enforced disappearance of P1, whether acting jointly, in combination, or otherwise. The plaintiffs rely on a combination of direct testimony, CCTV material, SUHAKAM and STF findings, and alleged investigative and post-incident conduct to establish involvement of State agents. The defendants deny any such involvement, contending that the perpetrators remain unknown.

[82] The evidence shows the abduction operation was executed in a coordinated, structured manner: multiple vehicles boxed in P1's vehicle, motorcycles controlled traffic flow, and masked individuals swiftly removed P1 before the convoy departed. The entire event lasted approximately one minute. The precision suggests planning, logistical capacity, and operational familiarity – factors more consistent with trained personnel than with opportunistic criminal groups.

[83] Although the defendants emphasised that no perpetrator was formally identified, this court cannot ignore the presence of a gold-coloured Toyota Vios later revealed to be linked to special branch personnel of D12. The failure to disclose this information at the initial stage of the investigation

A weighs heavily against the defendants. The subsequent emergence of this fact during SUHAKAM proceedings supports the inference that material information was being withheld.

[84] The SUHAKAM and STF inquiries do not bind this court. Nevertheless, their findings are relevant. Both inquiries pointed to
B similarities between P1's disappearance and that of Amri Che Mat, including operational methodologies, the type of vehicles utilised, and the co-ordinated seizure of the victim. PW9 and PW11, testifying on the STF process, confirmed that the task force considered that both disappearances were likely to involve an identical operational unit. The consistency of these
C independent inquiries provides persuasive corroboration.

[85] The testimony of PW4 (P2) further described interactions with police personnel following the abduction. The responses, characterised by limited disclosure and shifting explanations, undermined confidence in the assertion that the defendants lacked knowledge. The defendants offered no adequate
D reason as to why decisive lines of inquiry, particularly those involving the gold-coloured Toyota Vios and connected officers, were not pursued with the seriousness it deserves.

[86] As narrated earlier, a significant factor in the court's assessment is the sequence of events concerning Lam Cheng Nam. Although investigative
E officers had concluded that Lam was not involved, he was nonetheless charged, resulting in the suspension of the SUHAKAM inquiry. The later withdrawal of the charge cannot be explained satisfactorily based on the evidence available. The timing between the charge and the suspension of the inquiry leads to the inference that the charge served a function other than
F prosecution, strengthening the inference of deliberate interference.

[87] The absence of legitimate investigative progress over an extended period, despite the availability of CCTV evidence, eyewitness accounts, and identified vehicles, points to investigative inertia inconsistent with a *bona fide*
G investigation. While operational discretion exists in policing, it must be exercised diligently. A marked failure to pursue central leads implies that the authorities had reasons not to do so, or that those involved in the investigation were themselves connected to the perpetrators.

[88] The defendants submitted that co-ordination alone does not prove
H State involvement, as criminal syndicates can operate in a sophisticated manner. That point is accepted as a general proposition. However, in this case, co-ordination is not the sole basis for the inference of State involvement. The link to special branch personnel from D12, the conduct of investigators, the obstruction of independent inquiry, and the pattern
I reflected in the other disappearance of Amri Che Mat elevate the inference beyond mere speculation.

[89] I accept that direct evidence identifying specific individual officers was not adduced. However, such evidence is not necessary where the relevant facts lie peculiarly within the knowledge of the defendants. Having led sufficient evidence to prove a *prima facie* case on the nature of abduction, the evidential burden shifted to the defendants under s. 106 of the Evidence Act 1950. Under s. 106 of the Evidence Act 1950, once the plaintiffs show a *prima facie* case through operational characteristics, vehicle identification, and subsequent conduct, the burden shifts to the defendants to provide a credible explanation. Their failure to do so reinforces the inference of involvement.

[90] While the ultimate legal burden of proof remains with the plaintiffs, this court accepts that s. 106 of the Evidence Act 1950 requires the defendants to account for factual matters, explaining how the defendants were not in any way involved with the disappearance of P1. More so, when the defendants, in particular, D11 and D12, command extensive intelligence resources and investigative control. Comprehensive submissions were filed by the defendants to seek to explain.

[91] The plaintiffs rely heavily on the testimony of PW4, who recounted repeated attempts to obtain information from the authorities and described the responses as non-transparent and evasive. This account is consistent with the recorded absence of meaningful progress in the investigation despite early availability of CCTV footage and multiple leads. The defendants' position – that they had no knowledge of the perpetrators – sits uncomfortably with their control over the relevant investigatory resources, particularly where key information, such as the identity of the owner of the gold-coloured Toyota Vios, which was linked to special branch personnel, was only forthcoming during the SUHAKAM inquiry.

[92] After analysing the evidence of the defendants as well, and having considered the submissions of both the parties, this court is of the considered view, the explanation given by the defendants is not credible, and that the plaintiffs have proved on a balance of probabilities that the deprivation of liberty of P1 is attributed to the State by State agents themselves or by private actors acting with State authorisation in combination or otherwise amongst D1 to D12.

[93] The strands of evidence, taken individually, may admit of ambiguity but taken together, they present a consistent matrix which the defendants have not been able to displace with any plausible exculpatory account.

[94] In other words, the logical inference drawn from the totality of the evidence is that the abduction involved State actors, whether acting directly or indirectly, or with the knowledge, acquiescence, or support of others within the policing structure. The defendants' inability to provide credible alternative explanations further supports this conclusion. Moreover, the

A consistency between SUHAKAM and STF findings bolsters the plaintiffs' case that a special branch unit within D12 which is under the control and direction of D11 (see s. 4 of the Police Act), orchestrated or facilitated the operation.

B **[95]** In determining indirect responsibility, this court considers conduct after the abduction: concealment of information, misdirection of inquiries, and failure to pursue obvious investigative leads. These omissions are not neutral; rather, they suggest involvement of individuals who either possessed direct knowledge or had reason to protect those responsible. Such conduct constitutes indirect participation in enforced disappearance.

C **[96]** On the totality of the evidence, this court finds, on a balance of probabilities, that one or more of D1 to D12, acting jointly, in combination, or otherwise, were directly or indirectly responsible for the abduction and/ or enforced disappearance of P1. The inference of State involvement is compelling, and the defendants have not displaced it with convincing explanation.

D

Issue No 2 - Whether The Defendants Have Violated The Constitutional Rights And Statutory Duties Under The Relevant Laws

Rival Contentions

E **[97]** The plaintiffs submitted that the abduction and subsequent disappearance of P1 amount to a deprivation of life and personal liberty contrary to art. 5(1) of the FC. They further asserted that the unequal treatment and selective disclosure constitute a breach of art. 8(1) of the FC. The plaintiffs submitted that the combination of the capture and continued

F refusal to disclose the fate or whereabouts constitutes an ongoing violation.

[98] PW4 Susanna Liew (P2) testified regarding the absence of genuine investigative progress and the evasive posture of authorities. She recounted multiple engagements with police where, despite available CCTV footage and internal knowledge, no meaningful disclosure was made.

G

[99] The plaintiffs refer to the circumstances surrounding the gold-coloured Toyota Vios (PFC 1623), said to be linked to special branch personnel. PW4 confirmed that the SUHAKAM inquiry testimony by Sergeant Shamzaini implicated police involvement and indicated that the abduction was

H undertaken by the same group responsible for the disappearance of Amri Che Mat, under the authority of DCP Dato' Awaludin Jadid (D3) and with the knowledge of the then-IGP (D1).

[100] The STF report, confirmed on oath by Datuk Rahim Uda (PW11), a former judge and Chairman of the STF, and supported by CP Datuk Seri

I Zamri (PW9), disclosed that investigations into this case shared a common link with other disappearances and involved simultaneous review by multiple enforcement agencies. The plaintiffs submitted that these findings corroborate State involvement and consequent constitutional breach.

[101] The plaintiffs further submitted that police conduct, including an attempt to halt the SUHAKAM inquiry by charging Lam Chang Nam despite earlier findings by DSP Supari (D6) and SAC Fadzil Ahmat (D5) that Lam was uninvolved, shows an abuse of investigative authority and continued deprivation of information amounting to breach of statutory duties under the Police Act 1967.

[102] The defendants deny any breach of constitutional rights or statutory duties. They submit that no evidence places P1 in State custody at any material time and, therefore, art. 5 of the FC is not triggered.

[103] DW2 Insp Ali Asraf testified that although he initially remarked that the operation "appeared" to resemble a police-style manoeuvre subsequent confirmation from Bukit Aman indicated that there was no police operation at the material time.

[104] The defendants submitted that investigations were duly opened, statements taken, CCTV sought, crime scene processed, and updates provided. Decisions regarding prosecution were, they asserted, under the exclusive purview of the Public Prosecutor.

[105] The defendants submitted that the SUHAKAM and STF reports are not binding, and both suffered from procedural limitations, including absence of compulsion powers and lack of direct evidence identifying perpetrators, as confirmed during cross-examination of PW11.

Court's Analysis And Findings

[106] The starting point in determining this issue is that P1's disappearance occurred in broad daylight in an urban residential area and has remained unresolved for more than seven years. The character of the incident, as described by PW1 and depicted in the CCTV compilation tendered at trial, is neither spontaneous nor opportunistic. The convoy-style interception, masked operatives, traffic control by motorcyclists, and the swift departure suggest a degree of organisation inconsistent with ordinary criminality. This backdrop is material because the nature of the operation bears directly on whether constitutional guarantees under arts. 5 and 8 of the FC are engaged.

[107] Article 5 of the FC is reproduced as follow:

> Article 5 Liberty of the person
>
> (1) No person shall be deprived of his life or personal liberty save in accordance with law.
>
> (2) Where complaint is made to a High Court or any judge thereof that a person is being unlawfully detained the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and release him.

A (3) Where a person is arrested he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.

(4) Where a person is arrested and not released he shall without unreasonable delay, and in any case within twenty-four hours (excluding
B the time of any necessary journey) be produced before a magistrate and shall not be further detained in custody without the magistrate's authority:

Provided that this Clause shall not apply to the arrest or detention of any person under the existing law relating to restricted
C residence, and all the provisions of this Clause shall be deemed to have been an integral part of this Article as from Merdeka Day:

Provided further that in its application to a person, other than a citizen, who is arrested or detained under the law relating to immigration, this Clause shall be read as if there were substituted for the words "without unreasonable
D delay, and in any case within twenty-four hours (excluding the time of any necessary journey)" the words "within fourteen days":

And provided further that in the case of an arrest for an offence which is triable by a Syariah court, references in this Clause to a magistrate shall
E be construed as including references to a judge of a Syariah court.

(5) Clauses (3) and (4) do not apply to an enemy alien.

[108] Article 8 of the FC is reproduced below:

(1) All persons are equal before the law and entitled to the equal
F protection of the law.

(2) Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or
G the establishing or carrying on of any trade, business, profession, vocation or employment.

(3) There shall be no discrimination in favour of any person on the ground that he is a subject of the Ruler of any State.

H (4) No public authority shall discriminate against any person on the ground that he is resident or carrying on business in any part of the Federation outside the jurisdiction of the authority.

(5) This Article does not invalidate or prohibit:

(a) any provision regulating personal law;

I (b) any provision or practice restricting office or employment connected with the affairs of any religion, or of an institution managed by a group professing any religion, to persons professing that religion;

(c) any provision for the protection, well-being or advancement of the aboriginal peoples of the Malay Peninsula (including the reservation of land) or the reservation to aborigines of a reasonable proportion of suitable positions in the public service;

(d) any provision prescribing residence in a State or part of a State as a qualification for election or appointment to any authority having jurisdiction only in that State or part, or for voting in such an election;

(e) any provision of a Constitution of a State, being or corresponding to a provision in force immediately before Merdeka Day;

(f) any provision restricting enlistment in the Malay Regiment to Malays.

[109] Article 5(1) of the FC guarantees that no person shall be deprived of life or personal liberty save in accordance with law. The jurisprudence recognises that the right protects not merely procedural fairness in detention but also the fundamental security of the person against unlawful seizure. The plaintiffs say that P1 was forcibly taken against his will in circumstances that amounted to arbitrary deprivation of liberty. In considering the evidence as a whole, the court finds force in the submission that unknown operatives acted with a level of sophistication suggestive of institutional organisation.

[110] The defendants submitted that as P1 was never shown to be in police custody, art. 5 of the FC is not triggered. With respect, this court does not agree that formal custody is a prerequisite. The critical fact is whether the seizure was executed by or with the involvement, acquiescence, support, or direction of State agents. The absence of a lawful arrest, coupled with subsequent non-disclosure of whereabouts, drives this court to the inference that the deprivation was not "in accordance with law".

[111] The plaintiffs rely heavily on the testimony of PW4, who recounted repeated attempts to obtain information from the authorities and described the responses as non-transparent and evasive. This account is consistent with the recorded absence of meaningful progress in the investigation despite early availability of CCTV footage and multiple leads. The defendants' position, that they had no knowledge of the perpetrators, sit uncomfortably with their control over the relevant investigatory resources, particularly where key information, such as the identity of the owner of the gold-coloured Toyota Vios, was only forthcoming during the SUHAKAM inquiry.

[112] This court is persuaded that the STF inquiry, though not binding, bears relevance. The testimony of PW9 and PW11 confirms that the STF examined both the present case and that of Amri Che Mat and concluded that similar *modus operandi* was deployed. Although the STF lacked compulsion powers, the consistency between its findings and the SUHAKAM findings on operational patterns is probative. The defendants have not provided a convincing alternative explanation for these similarities.

[113] The constitutional complaint is compounded by the State's investigative posture. The handling of the gold-coloured Vios is illustrative. The vehicle was linked to special branch personnel. Yet this was not disclosed in the early stages of investigation. Instead, it surfaced only when exposed through SUHAKAM proceedings. The defendants did not provide a satisfactory explanation for this omission. This court is entitled to draw an adverse inference for failure to promptly disclose material information within their exclusive knowledge.

[114] The charge against Lam Cheng Nam is another troubling feature. DSP Supari Muhammad (D6) had earlier concluded that Lam was not involved. Nevertheless, the charge proceeded, and SUHAKAM was informed that its inquiry could not continue. While charging decisions fall within prosecutorial discretion, the timing and effect of the charge raise questions of motive. The subsequent withdrawal of the charge (E202 NOP pdf. 619 and 623 and E59 p. 35) reinforces the plaintiffs' position that the criminal proceedings were instituted not to pursue genuine investigation but to stifle scrutiny. Such conduct, if established, supports the existence of constitutional breach.

[115] In evaluating art. 8 of the FC, the plaintiffs say they were not treated equally under the law. This court accepts that equal protection under art. 8 requires transparency in investigation, particularly when the person's liberty is at stake. The failure to provide consistent and meaningful updates to the family, despite access to relevant information, falls short of this requirement.

[116] The statutory duties of the police underscore the constitutional framework. Sections 3(3) and 20(3) of the Police Act 1967 imposes positive obligations to, *inter alia*, maintain law and order, prevent and detect crime, and protect life and property. The cumulative effect of the conduct alleged, failure to pursue available leads, withholding of material information, and delayed disclosure, leads to an inference of a breach of these statutory responsibilities. While operational discretion is recognised, it must be exercised reasonably and in good faith. The pattern of conduct presented does not support such characterisation.

[117] The defendants argue that because the perpetrators are unknown, no breach can be attributed to them. This position assumes that State involvement must be proven through direct evidence.

[118] However, constitutional adjudication permits reliance on circumstantial evidence where primary facts, taken together, point more likely than not to State participation or acquiescence. This court finds that the circumstances surrounding the abduction, the conduct of certain identified officers, the concealment of information, and similarities with other disappearances cumulatively support the plaintiffs' case. In *CCH & Anor v. Pendaftar Besar Bagi Kelahiran Dan Kematian, Malaysia* [2022] 1 CLJ 1; [2022] 1 MLJ 71 para. 49, Tengku Maimun CJ said:

> ... The starting point is the understanding that fundamental rights and provisions must be construed as broadly as possible. Next, provisions which limit those rights must be construed as narrowly as possible.

[119] In the absence of credible alternative explanation, and given the defendants' access to material information, this court considers that the evidential burden shifted to the defendants to displace the inference of involvement or acquiescence. Their failure to do so strengthens the inference that the defendants, directly or indirectly, violated P1's fundamental rights to liberty and equality before the law.

[120] Accordingly, I find that the plaintiffs have established, on a balance of probabilities, that P1's constitutional rights under arts. 5 and 8 of the FC were violated. Further, the conduct of the authorities in the aftermath of the disappearance constitutes a breach of statutory obligations, and the defendants' explanation is insufficient to dispel the inference of State involvement or acquiescence.

[121] On the totality of the evidence, this court finds, on a balance of probabilities, that one or more of D1 to D12 defendants, acting jointly, in combination, or otherwise, were directly or indirectly responsible for the abduction and/or enforced disappearance of P1. The inference of State involvement is compelling, and the defendants have not displaced it with a convincing explanation.

Issue No 3 - Whether The Defendants Have Committed Misfeasance in Public Office

Rival Contentions

[122] The plaintiffs contend that misfeasance is established because senior police officers exercised public powers with knowledge or reckless indifference that their acts would cause harm. They point to the alleged involvement of DCP Awaludin Jadid (D3/DW1), CP Dato' Huzir Mohamed (D4), Saiful Bahari bin Abdul Aziz (D10), DSP Azam Azahari, and Supt Hazril bin Kamis (D8), each allegedly responsible for the abduction or subsequent suppression of information of P1's whereabouts.

[123] PW4 testified that police withheld the fact that the gold-coloured Toyota Vios PFC 1623 belonged to special branch personnel, and that this was initially concealed under the Official Secrets Act and only disclosed when exposed during SUHAKAM inquiry.

[124] PW9 and PW11 confirmed that STF members reviewed multiple cross-agency investigative documents and concluded that police were involved in a co-ordinated pattern of disappearances. The plaintiffs say this demonstrates recklessness or targeted malice.

A **[125]** The plaintiffs further point to the charging of Lam Chang Nam as a tactical move to halt the SUHAKAM inquiry, although multiple officers including DSP Supari (D6) had earlier concluded that Lam was uninvolved.

[126] The defendants deny misfeasance. They say no evidence establishes that any named officer acted for an improper purpose.

B

[127] Dato' Awaludin Jadid (D6/DW1) and Inspector Ali (DW2) both denied operational involvement. The defendants submitted that the plaintiffs' allegations rest on speculation, inferences, and hearsay statements.

[128] The defendants submitted that even if the STF report raised concerns,
C Datuk Rahim Uda (PW11) himself acknowledged STF's lack of statutory powers of compulsion for the attendance of witnesses, the absence of direct evidence linking officers to the abduction, and that its recommendations were administrative in nature.

Court's Analysis And Findings

D

[129] In *Tony Pua Kiam Wee v. Government Of Malaysia & Another Appeal* [2020] 1 CLJ 337; [2019] 12 MLJ 1217 it was held by the Federal Court that the elements for the tort of misfeasance in public office are:

(i) an abuse of public power or authority;

E

(ii) by a public officer;

(iii) who either (a) knew that he was abusing his public power or authority; or (b) was recklessly indifferent as to the limits of their public power or authority; and

F (iv) who acted or omitted to act either with:

(a) the intention of harming the plaintiff (targeted malice); or

(b) with the knowledge of the probability of harming the plaintiff, or with reckless indifference to the probability of harming the plaintiff
G or a class of persons of which the plaintiff was one.

[130] The plaintiffs asserted that certain senior police officers participated in or facilitated the abduction of P1, and further engaged in subsequent acts calculated to obstruct or frustrate discovery of his fate. If established, these factual allegations fall squarely within the operative scope of misfeasance in
H public office.

[131] The defendants denied that any of the officers exercised public power improperly. They described the alleged abduction as a criminal act by unknown individuals and assert that police investigations were undertaken within the confines of lawful authority.

I

[132] However, this court, must evaluate these submissions against the evidence adduced and the objective circumstances, including the pattern of conduct observed before and after the abduction.

[133] The initial seizure of P1, according to the plaintiffs' version, was undertaken by State agents or with their acquiescence. According to the defendants' version, the perpetrators were unknown.

[134] However, the existence of testimony of witnesses, in particular, PW5 before this court, and PW5 and Sergeant Mohamad Shamzaini bin Mohd Daud (D9/DW6) before SUHAKAM, implicating named senior officers of the special branch, raises serious questions. The evidence that the same operational group was involved in the disappearance of another individual, Amri Che Mat, suggests an organised unit acting with continuity and direction. Although the defendants question the evidential value of SUHAKAM's findings, the consistency of narrative between independent inquiries carries weight.

[135] The conduct of the investigation after the abduction is particularly significant. Several police officers, most notably DSP Supari Muhammad (D6) and SAC Fadzil Ahmat (D5) formed the initial view that Lam was not involved – yet Lam was charged. That prosecutorial step halted the SUHAKAM inquiry. The withdrawal of the kidnapping charge (E202 NOP pdf p. 621 and E59 p. 35) against Lam shortly thereafter, strengthens the inference that the charge was not pursued for legitimate purposes. Although the power to prosecute lies with the Public Prosecutor, the operational role of police in presenting evidence cannot be overlooked. The timing of the charge, coupled with its later withdrawal, suggests that the proceeding was used to achieve an ulterior objective, namely, disruption of the SUHAKAM's scrutiny and inquiry.

[136] The handling of the gold-coloured Toyota Vios is equally troubling. This vehicle was eventually identified as belonging to special branch personnel, yet the information did not surface at the preliminary stage of the investigation. It emerged only during the SUHAKAM proceedings. The explanation by Inspector (now ASP) Khor Yi Shuen (D7/DW4) that it was confidential as it involved the special branch is more injurious rather than exculpatory.

[137] The vehicle's link to specific police personnel, combined with its presence at the scene, is inconsistent with the defendants' assertion that no police officer was implicated. The absence of disclosure gives rise to the inference that information within the control of public officers was deliberately suppressed.

[138] The refusal to disclose the statements recorded by D7/DW4 underscores the suppression of information.

A **[139]** There was also evidence that the officer who issued a seizure list, Supt Hazril Bin Kamis (D8/DW3), was recalled to correct his testimony after SUHAKAM suggested his earlier explanation was untenable. The revision of official accounts, without satisfactory justification, lends support to the plaintiffs' position that public powers were being exercised
B inconsistently and, in a manner, calculated to obscure the truth. In a misfeasance inquiry, the manner in which public officers seek to explain or amend their narrative is relevant in determining the existence of bad faith.

[140] The cumulative weight of the evidence, particularly the consistent link between P1's disappearance and the identities of senior police officers,
C supports an inference that some of D1 to D12 were involved in or aware of the wrongful act. The defendants have not satisfactorily rebutted the inference that those officers possessed actual or constructive knowledge of the events, nor that they acted with reasonable diligence in their duty to investigate.

D **[141]** The requirement of malice may be satisfied either by establishing that injury to the plaintiffs was specifically intended or by showing that the public officers acted with reckless indifference to the prospect of harm. Even if this court were to accept that the officers did not intend specifically to injure the plaintiffs, the pattern of conduct alleged, that of abduction, suppression of
E information, and initiation of misleading prosecution, demonstrates, at least, reckless disregard of the plaintiffs' rights. Such disregard is sufficient to satisfy the second limb of misfeasance.

[142] The defendants lay emphasis on the absence of direct evidence linking specific officers to the abduction. However, the tort of misfeasance does not
F require confession or direct visual identification of the individual officers' participation. Circumstantial evidence may be sufficient, particularly when the information necessary to complete the evidentiary nexus lies exclusively within the knowledge of the public authority. Here, the failure to account for operational decisions, vehicle ownership, and investigation irregularities
G strengthens the plaintiffs' case.

[143] In assessing whether the officers acted in the purported exercise of public power, this court considers that the conduct in question, that of surveillance, seizure, and control of information, falls within the functional parameters of police power, even if unlawfully exercised. Acts done through
H purported authority, *albeit* misused, would still satisfy the "in exercise of public powers" requirement. The defendants have not shown that the officers were acting in a private capacity or for private ends unconnected to their official duties.

I **[144]** The disappearance remained uninvestigated in any meaningful way over an extended period, notwithstanding that the police had early access to core factual material. This prolonged inertia, in the face of affirmative

statutory duties under ss. 3(3) and 20(3) of the Police Act 1967 and the other relevant sections mentioned in the CPC, reflects disregard for the very purpose of those duties – to prevent and detect crime, and safeguard the life and security of the public. Such indifference, particularly when directed at the family's pursuit of information, constitutes maladministration and reinforces the plaintiffs' allegations of misfeasance in public office against D1, D2, D3, D4, D8, D10, D11 and D12.

[145] A right to information has been held by the Federal Court in *Sivarasa Rasiah v. Badan Peguam Malaysia & Anor* [2010] 3 CLJ 507; [2010] 2 MLJ 333 to be a constitutional right guaranteed under art. 10(1)(a) of the FC. And, in *Siti Aisyah v. PP* [2019] 7 CLJ 27; [2019] 4 MLJ 46 para. 56, Harmindar Singh JCA (later FCJ) said:

> For all the foregoing reasons, we did not agree with the proposition, as advanced in *Husdi*, that police statements are absolutely privileged. In the upshot, *Husdi* should no longer be followed in this respect.

[146] It is concomitant with a fair trial with parties constitutionally entitled to equal protection of the law, that the truth should serve to level the battleground, more so, when an individual takes on the might of the State and, in the process, the shield of privilege, if any, should give way to the test of relevancy.

[147] In *B A Rao & Ors v. Sapuran Kaur & Anor* [1978] CLJU 14; [1978] 1 LNS 14; [1978] 2 MLJ 146 His Lordship, Raja Azlan Shah FCJ (later HRH) said:

> To ordain that a court should decide upon the relevant facts and at the same time that it should not hear some of those relevant facts from the person who best knows them and can prove them at first hand, seems to be a contradiction in terms.
>
> It is best that the truth should be out and that the truth should prevail.

[148] It is consonant with the concept of open justice and fairness, see *Khatr & Ors v. State Of Bihar & Ors* AIR 1981 SC 1068 where Bhagwati J said:

> It must be remembered that we have adopted the adversary system of justice and in order that truth may emerge from the clash between contesting parties under this system, it is necessary that all facts relevant to the inquiry must be brought before the court and no relevant fact must be shut-out, for otherwise the court may get a distorted or incomplete picture of the facts and that might result in miscarriage of justice.

[149] In the premises, the court is satisfied that the plaintiffs have proven, on a balance of probabilities, that one or more of D1 to D12 exercised public powers in bad faith and in a manner calculated to injure or with reckless indifference to the likelihood of injury to the plaintiffs. The factual matrix, when taken cumulatively, establishes the constituent elements of misfeasance in public office.

A **Issue No 4 - Whether The Defendants Had Conspired And Combined Together With The Intention To Injure/Cause Harm To The Plaintiffs**

Rival Contentions

[150] On conspiracy to injure or to cause harm to the plaintiffs, the plaintiffs
B submitted that the co-ordinated manner of the abduction – seven vehicles, masked men, outriders – corroborated by PW1, indicated a planned group operation.

[151] PW4 testified that the SUHAKAM inquiry statements revealed that the same unit abducted both P1 and Amri Che Mat – demonstrating a single
C operational conspiracy.

[152] The plaintiffs submitted that the subsequent concealment of the gold-coloured Toyota Vios' ownership, the suppression of CCTV evidence, the recall of ASP Khor Yi Shuen (D7/DW4) to correct his earlier testimony at the SUHAKAM inquiry, and the alleged planting of documents connecting
D P1 to a deceased third party (Fauzi) establish overt acts in furtherance of the conspiracy.

[153] The defendants submitted that no conspiracy is made out because there is no evidence of an agreement or common design amongst the defendants with reliance placed on *Renault SA v. Inokom Corporation Sdn Bhd & Anor And*
E *Other Applications* [2010] 5 CLJ 32; [2010] 5 MLJ 394 and *Global Ventures Network Sdn Bhd v. Lokman Dato' Mohd Kamal & Another Appeal* [2018] 7 CLJ 1; [2018] 6 MLJ 103. They submitted that the co-ordinated nature of the abduction does not necessarily indicate State involvement, and criminal groups could execute similar operations.

F **[154]** The defendants further emphasised that hearsay references in SUHAKAM statements are insufficient to meet the burden of proving conspiracy.

Court's Analysis And Findings

G **[155]** The issue concerns whether the defendants, or any of them, reached an agreement, express or implied, to abduct P1 and/or to suppress information regarding his fate, thereby causing harm to the plaintiffs. Conspiracy may be established by direct or circumstantial evidence; proof of explicit communication is not mandatory. This court must assess whether
H the factual matrix demonstrates a shared design or common purpose to achieve the unlawful objective.

[156] The CCTV evidence, viewed with the testimony of PW1, discloses that the abductors operated in concert, utilising multiple vehicles, motorcycles, and a tightly sequenced interception. The operation was precise
I and rapid, lasting less than a minute. This court accepts that such execution implies pre-planning, logistical preparation, and allocation of roles; it was not random violence. The manner of execution is such that it drives this court to hold that it was an organised unit.

[157] The alleged link between the gold-coloured Toyota Vios and special branch personnel of D12 is similarly significant. Even if ownership of the vehicle alone does not prove conspiracy, the failure to disclose this information promptly, coupled with later acknowledgment during SUHAKAM proceedings, contributes to the inference that the implicated officers acted jointly with others on a coordinated objective. The identity of the registered owner was information peculiarly within the knowledge of the police; delayed disclosure supports a finding of concealment.

[158] The testimony of PW4 regarding SUHAKAM proceedings, and the evidence summarised by PW9 and PW11 regarding the STF findings, leads to the inference that P1's abduction was not isolated but shared operational similarities with the disappearance of Amri Che Mat. The STF concluded that a common team may have participated in both incidents. I agree that it is more probable than not. While the defendants argue that these findings are not binding, I consider them relevant. Consistent *modus operandi* across two disappearances supports inference of an ongoing structured effort potentially involving the same personnel.

[159] The chain of events concerning Lam further supports the inference of a common plan. The decision to charge Lam, despite the initial investigative view that he was uninvolved – effectively halted the SUHAKAM inquiry. That decision was reversed shortly afterward. I observed that the timing of both actions aligns with the narrative that the charge was instituted for the purpose of frustrating the inquiry rather than pursuing justice. It is therefore a plausible overt act in furtherance of a conspiratorial objective, namely, to suppress public scrutiny and shield the true perpetrators.

[160] Even if individual acts, such as withholding vehicle information, failing to investigate leads, or charging Lam, are viewed separately, they may appear as administrative irregularities. However, when evaluated cumulatively, they reflect a pattern of co-ordinated conduct consistent with the allegation that multiple actors were acting towards a shared unlawful object. The coherence of these acts, rather than their isolated features, gives rise to the inference of combination.

[161] The law recognises that conspiracy need not involve the entire cohort participating in every step. It is sufficient that each participant agrees to pursue the common objective. See *Khoo Teng Chye v. Cekal Berjasa Sdn Bhd & Anor* [2015] 6 CLJ 449; [2015] MLJU 992 para. 9 where the Court of Appeal speaking through Hamid Sultan JCA held as follows:

> [9] It is also well settled that in the absence of an express admission of a conspiracy, an agreement to injure has to be established in the vast majority of cases by circumstantial evidence. In *State of Tamil Nadu v. Nalini AIR* 1999 SC 2640, the Indian Supreme Court on the facts had this to say:

A

> The agreement, *sine qua non* of conspiracy, may be proved either by direct evidence which is rarely available in such cases or it may be inferred from utterances, writings, acts, omissions and conduct of the parties to the conspiracy which is usually done. *In view of Section 10 of the Evidence Act anything said, done or written by those who enlist their support to the object of conspiracy and those who join later or make their exit before completion of the object in furtherance of their common intention will be relevant facts to prove that each one of them can justifiably be treated as a conspirator*.
>
> (emphasis added)

[162] In *Kuwait Oil Tanker v. Al Bader* [2000] 2 All ER (Comm) 271 the English Court of Appeal held as follows:

> 111. ... Thus it is not necessary for the conspirators all to join the conspiracy at the same time, but we agree with the judge that the parties to it must be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they were acting in concert at the time of the acts complained of. In a criminal case juries are often asked to decide whether the alleged conspirators were 'in it together'. That may be a helpful question to ask, but we agree with Mr Brodie that it should not be used as a method of avoiding detailed consideration of the acts which are said to have been done in pursuance of the conspiracy'
>
> 133. **It does not follow from the above that each defendant must personally take part in every act so long as it is done pursuant to the agreement**. Moore-Bick J put the matter in this way (at p. 126):
>
> > Of course, as in any case of this kind, it is necessary to examine the evidence with care to see whether each defendant was involved in each fraudulent transaction, but once one reaches the conclusion that the defendants combined to steal from their employer by whatever means might present themselves, the question in relation to any particular scheme or enterprise in which only one or some of them can be shown to have directly participated is whether that enterprise fell within the overall scope of their common design. If several people agree to enable each other to steal from their employer, lending their support in different ways at different times and taking different shares of proceeds (or even each retaining for himself what he takes), each of them is party to the agreement pursuant to which all the thefts take place. In those circumstances there is in my judgment no need for each to be fully aware of the circumstances of each theft in order for him to be liable as a conspirator provided that the theft in question falls within the scope of the agreement.
> >
> > (emphasis added)

[163] In the present case, the plaintiffs allege that senior officers orchestrated or approved the abduction, while others acted later to limit exposure. The evidence adduced reflects overlapping roles: physical participation

(abduction), operational concealment (vehicle information), and institutional diversion (charging Lam). These features satisfy the requirement that different actors performed acts in furtherance of the shared purpose.

[164] The defendants' principal response is that criminal groups could perpetrate such an operation; thus, co-ordination alone does not imply State involvement. That submission is true in principle. However, the question here is whether the evidence, on balance of probabilities, supports that the co-ordinating actors were among the defendants or operating with their acquiescence. The subsequent concealment of information uniquely within the police's possession, and the suppression of inquiries, implicates those with institutional access. These features distinguish ordinary criminal co-ordination from State-linked conspiracy.

[165] The defendants submitted that the legal standard of proof has not been made out and further argued that no clear motive was shown. In conspiracy, motive is not essential; proof of agreement and overt acts suffices.

[166] The plaintiffs pointed to the evidence (given by PW2 and PW4) on P1's prior engagement in religious activities where he was alleged to attempt to proselytise Malay Muslim youngsters through the NGO known as Harapan Komuniti and a raid carried out at the Damansara Utama Methodist Church (E202 NOP pp. 328 to 330). For such alleged activities, PW3 said that when P1 travelled overseas, P1 was always stopped by the immigration authorities and asked to go to immigration office at Putrajaya (E202 NOP p. 332). PW2 recounted (E202 NOP p. 144) that on 26 August 2011 the family received a death threat with the message "Amaran! Lu Kristian celaka laknat! Lu kasi Kristian itu 12 Melayu. Lu jangan ingat kita Melayu tak tahu. Gua kasi bunuh sama lu. Lu tengok nanti Islam kuat ke Kristian kuat. Lu kafir laknat. Gua make sure lu mampus masuk neraka. Joe Fernandez No 1, lu No 2". While these do not prove motive, it is contextually relevant.

[167] I observed that PW3 testified (E202 pp. 327 and 328) that the investigations conducted by D6/DW8 was more focused on P1's alleged proselytisation activities rather than the abduction. PW3 said he had whilst being questioned by D6/DW8 during the latter's investigations on who he thought kidnapped P1, PW3 had responded "The police" to be met with a laughter by D6.

[168] That PW4 was interviewed on the Christianisation activities of P1 post his abduction, was confirmed by Inspector Ali Asraf Abu Bakar (E202 NOP pp. 2118 and 2119).

[169] While the aforesaid impugned acts of harassment over alleged proselytisation activities does not prove motive, it is contextually relevant. The critical consideration is that the impugned acts, that of abduction, concealment, and investigative obstruction – collectively demonstrate an intention to cause harm by depriving the plaintiffs of liberty, and recourse.

[170] It would be apposite to bear in mind that whilst art. 11(4) of the FC provides that "State law and in respect of the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, Federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam", art. 11(5) of the FC specifically provides that:

> (5) This Article does not authorize any act contrary to any general law relating to public order, public health or morality.

[171] The general law on public order would include the Penal Code. And, it cannot be gainsaid that the rule of law dictates that any charges for any alleged proselytisation activities should be brought in a court of law with the accused entitled to due process.

[172] On the totality of evidence, this court considers that the plaintiffs have established the existence of a co-ordinated plan to abduct P1, and to thereafter conceal his fate. The nature of the operational conduct, the subsequent exercise of public authority to misdirect or suppress investigation, and the alignment between SUHAKAM and STF findings comprise mutually reinforcing or corroborative strands of circumstantial evidence. The defendants have not displaced these inferences with a credible alternative explanation.

[173] Over and on top of the above, it is troubling that the AGC would enter appearance for Saiful Bahari bin Abdul Aziz (D10) and to conduct the defence for all the defendants including D10 despite having pleaded in their defence that D10 could not be located, and despite efforts having been made by DW10 to locate him.

[174] The defendants seek to defend this step by submitting that it is to defend vicarious liability from being visited upon D13. In my considered view, such an assertion is bereft of merit as the AGC has elected to act for D10 and with D10 not presenting himself to rebut the positive allegations against him, an adverse inference is drawn that if he had presented himself, his evidence would have been unfavourable to him.

[175] In my considered view, it does not lie in the mouth of AGC to consciously elect to enter an appearance for Saiful Bahari bin Abdul Aziz (D10) despite not being to locate him and, thus, preventing a judgment in default of appearance to be entered against him, and, at the same time seek to shield itself from the adverse consequences that would naturally follow from his absence to rebut the evidence marshalled against him. This is underscored by the defendants not producing the two statements recorded from D10, one by Inspector Rosnizam (E202 NOP p. 2664) and one by Inspector Ganesan a/l Meganathan (E202 NOP p. 2666). The evidence of these two recorded statements came to light during the cross-examination of

D7/DW4 (E202 NOP pp. 2664 and 2666). See s. 114(g) of the Evidence Act 1950 and *Munusamy Vengadasalam v. PP* [1987] 1 CLJ 250; [1987] CLJ (Rep) 221; [1987] 1 MLJ 492.

[176] Accordingly, the court finds, on a balance of probabilities, that one or more of D1 to D12 participated in or acquiesced to a conspiracy resulting in harm to the plaintiffs, and that such conduct satisfies the elements of combination and intention required under the law of conspiracy.

Issue No 5 - Whether The Defendants Were Negligent

Rival Contentions

[177] The plaintiffs contend that at the very least the defendants owe a duty of care to the plaintiffs to conduct themselves in accordance with law. That police officers have a duty of care to ensure that their actions are in accordance with law and respect the rights of individuals. This, they submitted is undeniably the duties vested upon the defendants as law enforcement officials which includes properly identifying suspects, following proper procedures for arrest and detention, and upholding the individual's rights, including the right to due process.

[178] The plaintiffs submitted that the defendants failed in their basic duties to investigate with the required diligence and to track the main suspects to take statements from DCP Dato' Awaludin Jadid (D3/DW1) and to investigate the police report of Norhayati (PW5) and the revelation by Sergeant Shamzaini of the involvement of the special branch personnel in the abduction of P1 and Amri Che Mat. There was a statement taken from D3 as revealed in the suit taken by PW5, but there was no evidence of any further action having been taken thereafter, despite the strong views expressed by D3 therein.

[179] With respect, reliance was rightly placed by the plaintiffs on the cases of *Syed Mohamed Nur Ali v. Weddrin Mojingkin & Ors* [2020] 3 CLJ 133; [2020] 9 MLJ 639 a decision of See Mee Chun J (later JCA); *Thayanantha Rao Bala Krishna v. Sjn Muhammad Izwan Izham & Ors* [2024] 6 CLJ 940 a decision of Johan Lee Kien How J and *Christina Carolina Gerarda Johanna Verstappen v. Ketua Polis Negara, Malaysia & Ors* [2025] 9 CLJ 785 a decision of Roz Mawar Rozain J to support their submissions that the police together with their statutory duty, have a common law duty of care owed to persons who would be the beneficiaries of the statutory duties imposed upon the police.

[180] In *Christina Carolina Gerarda Johanna Verstappen* (*supra*), Her Ladyship Roz Mawar Rozain J held that PDRM has the statutory duty under s. 20 of the Police Act 1967 to investigate crimes properly. This duty extended to foreseeable parties such as the plaintiff, who as the mother of the deceased, relied on PDRM to conduct a diligent and thorough investigation. The harm

suffered by the plaintiff was a direct and foreseeable consequence of the defendants' breach of duty. There were multiple breaches of statutory duties: (i) breach of s. 107A of the Criminal Procedure Code ('CPC') for failure to properly provide updates to the plaintiff and family members about the investigation progress; (ii) failure to ensure the conduct of the investigation was in accordance with the prescribed standards and procedures; (iii) failure to ensure that the criminal conduct was promptly detected and prosecuted; and (iv) multiple breaches of SOP for death investigation of the deceased. The breaches of statutory duty on the part of the defendants caused the plaintiff to continue suffering over the inability to obtain closure on the deceased's cause of death, (paras. 40, 41,46, 52-54 & 58).

[181] The plaintiffs pointed to the police's failure to secure CCTV recordings, suppression of information about the gold-coloured Toyota Vios, and refusal to take steps despite early knowledge of State involvement.

[182] PW4 described emotional harm arising from the authorities' refusal to disclose the fate of P1.

[183] The defendants deny the existence of any actionable duty of care. They say operational policing involves discretionary judgment and is non-justiciable. They further submit that investigations were timely opened and pursued, that Lam was investigated and charged based on available evidence, and that no causal link was proven connecting any omission to the disappearance. Reliance was placed on *Government of Malaysia & Ors v. Jumat Mahmud & Anor* [1977] CLJU 29; [1977] 1 LNS 29; [1977] 2 MLJ 103; *Gan Kim Thye v. The Union Omnibus Co Ltd* [1969] CLJU 41; [1969] 1 LNS 41; [1969] 1 MLJ 186; *Arab-Malaysian Finance Bhd v. Steven Phoa Cheng Loon & Ors And Other Appeals* [2003] 1 CLJ 585; [2003] 1 MLJ 567 for the trite principle that causation has to be proved and the damages claimed, reasonably foreseeable.

Court's Analysis And Findings

[184] The plaintiffs asserted that the defendants owed P1 a duty of care to protect his safety and to take reasonable steps to investigate his disappearance. They submitted that PDRM (D12), by virtue of its statutory functions under the Police Act 1967, must exercise its powers with due diligence and reasonable care. This duty is said to arise not only from statutory function but also from proximity: the police were notified immediately of the abduction, had early access to material information, and were the sole authority with the capacity to respond.

[185] On negligence, the threshold question is whether such a duty of care arises at common law. Although the defendants maintain that operational policing involves discretionary judgment immune from negligence scrutiny, this court is not persuaded that the existence of discretion negates the existence of a duty. Operational discretion does not preclude review where

the exercise of power is unreasonable or in bad faith. Where an individual has disappeared in circumstances suggestive of unlawful seizure, and where the police are the only entity with access to resources capable of searching, the relationship between the State and the victim becomes sufficiently proximate to ground a duty of care.

[186] The plaintiffs submitted that the abduction was not treated with the urgency required of a serious crime involving deprivation of liberty. The CCTV showing the incident was available at an early stage, yet the police response did not reflect the gravity of the situation. The lack of timely dissemination of the vehicle information, including the identity of the owner of the gold-coloured Vios, gives the appearance of an investigation that was deliberately limited rather than genuinely pursued. This omission constituted a breach of the duty to exercise reasonable care.

[187] The handling of the gold-coloured Toyota Vios (PFC 1623) is particularly notable. The ownership link to special branch personnel, of D12 though known internally, was not disclosed to the family or pursued as a central lead until revealed during SUHAKAM proceedings. A reasonable investigation would have actively pursued all leads, especially those connecting the abduction vehicles to specific individuals. Such failure demonstrates not merely oversight but a material departure from reasonable investigative standards.

[188] This court is cognisant that not every shortcoming in investigation amounts to negligence. However, a pattern of omissions and apparent suppression, when viewed cumulatively, indicates a breach of the duty to conduct reasonable and diligent inquiry. The plaintiffs have shown that the defendants failed to follow obvious leads, withheld key information, and failed to pursue credible investigative avenues. These omissions are inconsistent with the exercise of reasonable care.

[189] The treatment of the suspect, Lam, further reflects investigative irregularity. The authorities initially concluded that Lam was not involved in the abduction of P1. Nevertheless, he was charged, and this effectively suspended the SUHAKAM inquiry. That charge was later withdrawn. This sequence, coupled with the lack of credible evidence linking Lam to the abduction, suggests that investigative discretion was exercised for improper purposes, diverting resources from genuine investigation. In negligence terms, this constitutes a breach of the duty to conduct reasonable inquiries into a crime affecting liberty.

[190] The absence of effective police action following the abduction also inflicted foreseeable harm on the plaintiffs. They were left without knowledge of P1's fate and were subjected to prolonged uncertainty. This court accepts that emotional and psychological harm arising from the disappearance, and from the failure to pursue obvious lines of inquiry, was reasonably foreseeable.

A **[191]** A reasonable investigation would have provided timely updates, transparency, and pursuit of central leads. None of these have been adequately undertaken.

[192] D7/DW4 said that two statements were taken from Saiful Bahari (D10) and which purportedly exculpate D10 as not being at the scenes of the B disappearance of Amri and P1's abduction. However, the defendants failed, and refused to produce these statements, rendering the statement of D7/DW4 of no little or probative value. More so, when it is obvious that D7/DW4 being the IO for Amri's disappearance is an interested person, as there are not one but two suits against him grounded on *inter alia*, breach of C constitutional liberties, statutory duty, negligence, misfeasance in public office, conspiracy to injure and negligence. And, to cap it all off, D10 did not turn up, and neither was he produced to answer the serious allegations against him.

[193] Another big gap is the non-production of one ASP Azizi who is said D to be the immediate supervisor of Saiful Bahari, and who would have been the obvious person to call to explain what work does D10 do, what were the tasks assigned to him during the days before and after the two abductions, one of Amri Che Mat on 24 November 2016 and the other of P1 on 13 February 2017, produce D10's punch cards/time sheets, his travel logs E and claim expenses. Instead, none of these were produced or an explanation given for their non-production by the defendants.

[194] The defendants argue that causation is not established because the identity of the abductors remains unknown. However, causation in negligence is not confined to positive acts; it encompasses omissions. Had F reasonable steps been taken, prompt disclosure of vehicle ownership, proper evidential tracing, timely investigation on the two obvious suspects: (i) Saiful Bahari (D10) when he was still available before absconding and (ii) ASP Azizi, timely media alerts – there is a real probability that the harm could have been mitigated, or that P1's location could have been ascertained. In G my considered opinion, the inability to locate him, therefore, would be fairly connected to the failures in investigation.

[195] The defendants further argue that absence of proof of police involvement negates the existence of a duty. This sweeping and self- serving statement wants this court to overlook the elephant in the room which is H Saiful Bahari bin Abdul Aziz (D10) who is the special branch operative of D12 and the owner of the Toyota Vios PFC 1623, a vehicle normally stationed at PULAPOL and seen at the sites of both the abductions.

[196] In any event, taking the defendants' position at its highest, it nevertheless, misconceives the essence of the claim. The duty arises not from I complicity, but from the police's statutory and common-law responsibility

to respond reasonably to serious crime. Whether or not they participated in the abduction, they owed a duty to investigate competently thereafter. That duty was breached.

[197] The defendants also rely on the discretionary nature of policing with reliance placed on the case of *Hill v. Chief Constable of West Yorkshire* [1988] 2 All ER 238 for the proposition that the police cannot be questioned on the manner in which they exercise their discretion. However, *Hill*'s case has been overtaken by later English decisions to the effect that the police can be held to have a duty of care just like any other person. The important question is whether the plaintiffs were injured as a direct result of his acts or omissions.

[198] In *Robinson v. Chief Constable of West Yorkshire Police* [2018] 2 WLR 595, Lord Reed JSC of the English Supreme Court said:

> 45 For the purposes of the present case, the most important aspect of Lord Keith's speech in *Hill*'s case is that, in the words of Lord Toulson JSC (*Michael*'s case [2015] AC 1732, para 37), "he recognised that the general law of tort applies as much to the police as to anyone else". What Lord Keith said [1989] AC 53, 59 was this:
>
> > *There is no question that a police officer, like anyone else, may be liable in tort to a person who is injured as a direct result of his acts or omissions. So he may be liable in damages for assault, unlawful arrest, wrongful imprisonment and malicious prosecution, and also for negligence.*
>
> *The words "like anyone else" are important. They indicate that the police are subject to liability for causing personal injury in accordance with the general law of tort*. That is as one would expect, given the general position of public authorities as explained in paras 32-33 above.
>
> (emphasis added)

[199] The defendants also cited *Robinson* (*supra*) but quoted the part which held as follows:

> ... whilst there remains a duty of care imposed on police officers not by positive action to occasion physical harm or damage to property which ought reasonably to be avoided, there is no duty of care towards victims, witnesses or suspects in the manner of the investigation of offences or the prevention of crime. That also means that there is no duty of care to protect individuals from harm caused by the criminal acts of third parties.

[200] The defendant go on to cite and rely upon *Zulkiflee SM Anwar Ulhaque & Anor v. Arikrishna Apparau & Ors* [2013] CLJU 1264; [2013] 1 LNS 1264; [2014] 3 MLJ 553 where Abdul Aziz Abd Rahim JCA held (at [49]):

> Police investigation into any complaint or reported crime is entirely within the discretion of the police as to methodology or time taken. ... it is the police that has to decide how and what investigation to be carried out and whether arrest and detention of suspect is required to assist the investigation.

[201] In my considered opinion, in any event, discretion must be exercised honestly, in good faith, and for proper purposes. The evidence shows that multiple investigative paths were available and were not reasonably pursued. The investigative response was neither proportionate to the severity of the offence nor consistent with basic policing standards. The failure to act with reasonable diligence repudiates the defendants' reliance on operational discretion as a shield against liability.

[202] The cumulative failures that of: (i) non-disclosure of key information; ii) diversion of investigative focus; (iii) failure to secure CCTV evidence; (iv) failure to act promptly when supplied with the CCTV evidence procured by the family of the plaintiffs; (v) inconsistent explanation of events; (vi) failure to investigate multiple investigative paths – demonstrate a pattern of conduct falling below the standard of care expected of police authorities. The plaintiffs have established that these omissions were breaches of duty and that the resulting harm, that of, continuing deprivation of knowledge and the continuing loss of opportunity to locate P1, is directly connected to such breaches, all of which lay at the door of D1 to D12, and, in particular D4 to D7, D11 and PDRM (D12).

[203] Accordingly, I find that the plaintiffs have, on a balance of probabilities, established the elements of negligence against one or more of D1 to D12. The failures complained of were sufficiently serious, foreseeable, and causally related to the harm suffered. The defendants, and in particular, D4, D5, D6, D7, D11 and D12 are, therefore, liable in negligence.

Presumption Of Death

[204] Before I deal with the issue on damages, this would be an opportune time to deal with the plaintiffs wanting to seek a declaration for a presumption of P1's death. This was raised in their closing written submissions and confirmed by learned counsel Dato' Jerald Gomez on 5 November 2025 which is the day for the delivery of judgment. Reliance was placed on s. 108 of the Evidence Act 1950 which is reproduced hereunder:

> When the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

[205] However, with respect, I am of the considered view, that the pursuit for such a declaration is misconceived and I reject the same. This is because it was not pleaded, and even though seven years have passed by during the course of this action, no application was made for the statement of claim to be amended to place reliance on the same and to seek relief.

[206] In any event, if P1 is declared dead, it is his estate that ought to be the party to pursue the claim on his behalf, see *Natthanan Yoochomsuk & Anor v. Insp Mohd Noor Husri Johari & Ors* [2024] 9 CLJ 546 para. 56 ("*Balamurugan*'s case") where this court held as follows:

> It is to be observed that it expressly provided under s. 7(8) of the [Civil Law Act 1956] that a dependency claim can be pursued if there is no executor appointed after six months from the date of the deceased by the persons entitled to claim, that is, the dependants. However, this exception is not provided in a claim by the estate of the deceased, see s. 8 of the CLA (*supra*). Thus, as this action was for both a dependency and an estate claim, it was proper and in fact correct for the plaintiffs to apply for letters of administration for the purposes of initiating the action, see *Dato' Ramesh Rajaratnam v. Datin Zaleha Abd Rahman & Ors* [2014] 5 CLJ 669; [2014] 6 MLJ 651 at para. [12].

[207] In *Dato' Ramesh Rajaratnam v. Datin Zaleha Abd Rahman & Ors* [2014] 5 CLJ 669 para. 2 the Court of Appeal said as follows which is of relevance:

> [2] *The strict rule is that the letters of administration must be issued by the High Court to the administrator and/or administratrix before any action can be taken for the benefit of the estate. (See Janab's Key To Civil Procedure, 5th edn., pp. 143 and 144).* Some limited exceptions are found in O. 15 r. 6A of RC 2012. In *Ang Hoi Yin v. Sim Sie Hau* [1968] CLJU 7; [1968] 1 LNS 7; [1969] 2 MLJ 3, the plaintiff's administratrix brought an action against the defendant without having extracted the letters of administration even though it had been granted by the court. The defendant entered a conditional appearance and applied to the court to set aside the writ on the ground that the plaintiff had not acquired the *locus standi* yet. The court held that since the plaintiff had not extracted the grant of letters of administration, she had no power to sue as administratrix and therefore the suit was a nullity and must be set aside.
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> (emphasis added)

Issue No 6 - Whether The Plaintiffs Are Entitled To General Damages Or Aggravated And/Or Exemplary Damages And/Or Any Other Damages Or Relief As This Honourable Court Deems Fit

Rival Contentions

[208] The plaintiffs submit that if liability is established under any pleaded cause of action, including breach of constitutional rights, misfeasance in public office, conspiracy, and negligence, then damages necessarily follow. They submitted that the enforced disappearance of P1 has resulted in irreparable loss, mental anguish, and emotional distress on P2 and their family, for which general damages ought to be awarded.

[209] The plaintiffs further contend that the conduct of the defendants warrants aggravated and/or exemplary damages. They rely on authorities such as *Kugan*'s case (*supra*) and *Balamurugan*'s case (*supra*), where the courts

A have awarded aggravated or exemplary damages in the context of abuse of power by law enforcement officers, including violations of constitutional rights.

[210] The plaintiffs highlight that the wrongful acts here were perpetrated by State agents entrusted with policing responsibilities. It is said that the B abduction of P1, the withholding of his fate and whereabouts, and alleged suppression of material information reflect oppressive and arbitrary misuse of public power. Such conduct, the plaintiffs submit, calls for punishment beyond mere compensatory damages to vindicate both constitutional guarantees and public confidence in law enforcement.

C

[211] The plaintiffs submitted that the evidence of Susanna Liew Sow Yoke (P2/PW4) demonstrates ongoing suffering, characterised by years of uncertainty as to her husband's status, compounded by police obstruction.

[212] The STF report, confirmed on oath by Datuk Rahim Uda (PW9) and D CP Dato' Sri Zamri (PW11), is said to reinforce the gravity of the institutional conduct underlying P1's disappearance. In the plaintiffs' view, it underscores systemic impropriety that justifies exemplary sanction.

[213] The plaintiffs further submitted that damages are also justified for the deprivation of constitutional rights under arts. 5 and 8, citing jurisprudence E recognising vindicatory relief as appropriate to reinforce the sanctity of constitutional liberties.

[214] Finally, the plaintiffs prayed for orders compelling the disclosure of P1's whereabouts, in addition to monetary damages. They rely on international jurisprudence, including the Inter-American Court of Human F Rights' decision in *Alvarado Espinoza et al v. Mexico* (judgment of November 28, 2018) where States were ordered to undertake effective search obligations.

[215] The defendants submitted that the plaintiffs are not entitled to damages because liability has not been established. They submitted that there is no G evidence linking the State or any of the defendants to the abduction or disappearance of P1, and that damages cannot be awarded on the basis of speculation.

[216] Nevertheless, the defendants went on to submit that exemplary or H aggravated damages are exceptional remedies, only available where there is direct proof of oppressive, arbitrary, or unconstitutional conduct. They contend that the plaintiffs' allegations of misconduct are unproven and rest upon inference and hearsay. They further submitted that if investigative shortcomings are perceived, such deficiencies do not constitute bad faith or misfeasance and, therefore, cannot attract punitive damages. The defendants I made reference to PW11's concession that the STF had limited powers and did not uncover direct evidence implicating any officer.

[217] The defendants also submitted that no causal nexus has been established between any alleged act of the defendants and the claimed loss. As the fate and whereabouts of P1 remain unknown and the identity of the abductors unproven, the defendants submitted that the damage claims are too remote and speculative.

[218] As to relief compelling disclosure of P1's whereabouts, the defendants maintain that there is no evidential basis to conclude that the defendants possess that information, and, therefore, that such relief is untenable.

Court's Analysis And Findings

[219] Having found that the plaintiffs have established liability on the part of one or more of D1 to D12 for constitutional violations, misfeasance in public office, conspiracy, and negligence, this court must now consider the appropriate relief. The primary question is whether, and to what extent, general, aggravated and/or exemplary damages are recoverable in the circumstances of this case.

[220] The jurisprudence in Malaysia recognises that damages serve multiple purposes – compensation for loss suffered, vindication of constitutional rights, and deterrence against future abuse. Where constitutional rights under arts. 5 and 8 of the FC have been infringed, courts have awarded damages not only for pecuniary loss but also non-pecuniary harm including emotional distress, mental suffering, and loss of dignity. The nature of this case, involving enforced disappearance, falls squarely within the category of gravest interference with personal liberty.

[221] The enforced disappearance of P1 has deprived P2 and their family of knowledge of his fate. P2's testimony demonstrates prolonged anguish and unresolved grief extending over the past eight years. This suffering is not speculative; it is the natural and foreseeable consequence of enforced disappearance. This court is satisfied that the plaintiffs have established entitlement to general damages to compensate for this ongoing mental and emotional harm.

[222] Aggravated damages may be awarded where the defendant's conduct has increased the injury by aggravating the distress. Here, the conduct following the abduction – suppression of material information, failure to disclose the identity of the gold-coloured Toyota Vios' owner, misdirection of investigative focus, and inadequate updates – exacerbated the plaintiffs' distress. The defendants' failure to act transparently compounded the injury. The circumstances therefore justify an award of aggravated damages.

[223] The plaintiffs also seek exemplary damages. Such damages are awarded where the defendant's conduct is oppressive, arbitrary, or unconstitutional. Malaysian authorities recognise the availability of exemplary damages in cases involving abuse of power by public officials,

particularly where constitutional rights have been infringed, see *Rookes v. Barnard* [1964] AC 1129; *Roshairee Abd Wahab v. Mejar Mustafa Omar & Ors* [1997] 1 CLJ Supp 39; [1997] 1 BLJ 39; [1996] 3 MLJ 337. P1's forcible disappearance and the subsequent institutional conduct – halting independent inquiry, withholding of material information, and non-disclosure of P1's fate – collectively constitute oppression of the highest order.

[224] The defendants submitted that exemplary damages are unwarranted because no direct evidence establishes malicious intent. This submission is untenable. Exemplary damages do not require proof of malice; it suffices that the conduct was arbitrary or unconstitutional. The infringement of personal liberty and equality, coupled with subsequent obstruction, meets this threshold. The State and its agents must be held to a high standard when exercising coercive power; exemplary damages serve to signal that violations will be met with stern judicial condemnation.

[225] The defendants further asserted that damages cannot be awarded because the identity of the abductors remains unknown. Once State responsibility is established – directly or indirectly – damages flow. The absence of complete factual reconstruction does not preclude relief. Indeed, the deprivation of information is part of the harm for which damages are awarded.

[226] The principle of vindicatory damages is relevant here. Where constitutional rights are violated, damages may be awarded to vindicate the integrity of those rights, independent of compensatory valuation. This public dimension recognises that breaches of fundamental rights offend not only the immediate victim but the constitutional order. Given the seriousness of the infringement – the enforced disappearance of an individual without lawful authority – the award must reflect the need to vindicate constitutional fundamental rights.

[227] In the *Balamurugan*'s case (*supra*) this court had made reference to *Koperal Zainal Mohd Ali & Ors v. Selvi Narayan (Pentadbir Bersama Estet Dan Tanggungan Chandran Perumal, Si Mati) & Anor* [2021] 6 CLJ 157, where Nallini Pathmanathan FCJ in her minority decision, which resonates well with this court, after making reference to para. 1 of the Schedule to s. 25 of the Courts of Judicature Act 1964, articulated that:

> [102] As such all modern charters of rights, including the FC relating to fundamental rights of the individual, therefore provide for a remedial right for the enforcement of the substantive rights guaranteed under Part II.
>
> [103] The majority decision in *Nurasmira** to my mind, with the greatest respect, does not represent the position in law under the FC. I am constrained to depart from the majority decision in *Nurasmira* because there is, in point of fact, a remedy available to be exercised by the Judiciary under para. 1 of the Schedule to s. 25 of the CJA. It provides as follows:

> Powers to issue to any person or authority direction, orders or writs including writs of the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any others for the enforcement of the rights conferred by Part II of the Constitution, or any of them, or for any purpose.
>
> [104] The remedy for the enforcement of chartered or fundamental liberties may be provided for in the written Constitution itself or in the ordinary law. In Malaysia, the remedy is expressly provided for in the CJA, as set out above. Given the existence of a clear remedy it is incumbent on the courts of the country to avail themselves of these remedies and afford redress to individuals or groups who establish an infringement of such fundamental rights such as the right to life.
>
> [105] *Part II of the FC refers to the fundamental liberties of which the right to life under art. 5(1) of the FC, is arguably the most important human right, comprising not only the right to live, but also the right to liberty and a non-exhaustive list of rights, all related to the right to live with human dignity*.
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> * *Ketua Polis Negara & Ors v. Nurasmira Maulat Jaffar & Ors And Other Appeals* [2018] 1 CLJ 585 (FC)
>
> 242. The majority and the minority in the Federal Court in *Koperal Zainal* (*supra*) departed only on the point on whether section 8(2) of the CJA is an absolute bar to the award of exemplary damages where the victim of the constitutional tort has died. The majority held it is, and the minority dissented.
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> (emphasis added)

[228] In *Balamurugan*'s case (*supra* at para. 71), this court said that whatever opinion the court may have whether in an estate claim exemplary damages can be awarded for a constitutional tort, it is bound by the doctrine of *stare decisis* to follow the majority decision in *Koperal Zainal* (*supra*), as they are the decisions of the Federal Court.

[229] The defendants placed on reliance on both *Ketua Polis Negara & Ors v. Nurasmira Maulat Jaffar & Ors And Other Appeals* [2018] 1 CLJ 585 and *Koperal Zainal*. However, with respect, *Nurasmira* and *Koperal Zainal*, are applicable and, of course, binding on this court if P1 is in fact dead. There is no evidence before the court that P1 is in fact dead.

[230] Having found that the plaintiffs have proved on a balance of probabilities the causes of action as pleaded against the defendants, including but not limited, to the defendants (D1 to D12 save for D9) having breached the plaintiffs, including P1's constitutional right to life, and, that they in combination amongst them, conspired to injure or cause harm to the plaintiffs including P1, *ie*, to have P1 abducted, the burden shifts to the defendants to show that P1 is in fact dead, before reliance can be made on the statutory bar against exemplary damages housed in s. 8(2) of the Civil Law Act 1956. This burden has not been discharged.

[231] For the sake of completeness, I venture to add, it would not lie in the mouth of the defendants to seek to rely on s. 108 of the Evidence Act 1950 to have P1 declared to be presumed dead for the following reasons:

(i) it would negate and water down the constitutional right to know what has happened to P1;

(ii) public policy would be averse to such a presumption to be made in favour of a defendant in an enforced disappearance case, as it will be grossly disproportionate to the right to life; and

(iii) it may embolden would-be perpetrators to carry out cases of enforced disappearance, which is described by SUHAKAM as the most heinous of crimes, knowing that this can artificially bring a closure to cases of enforced disappearance.

[232] The plaintiffs also seek an order compelling disclosure of P1's whereabouts or fate. In principle, such relief may be granted where information is within the defendants' knowledge or control. In enforced disappearance cases, the continuing obligation to investigate and disclose persists. Although the passage of time complicates factual determination, this court is satisfied that the defendants remain under a duty to disclose any information within their possession or that may be reasonably ascertained. A mandatory order is, therefore, justified to ensure compliance with this continuing obligation.

[233] This court has considered whether the award of both aggravated and exemplary damages constitutes double punishment. While caution is warranted, the functions served by these remedies differ. Aggravated damages compensate for enhanced injury; exemplary damages punish and deter. Given the gravity of the conduct, both are warranted.

[234] Quantification of damages must reflect both the personal harm suffered by the plaintiffs and the public interest in vindicating constitutional rights. The prolonged deprivation of information, the distress endured, and the institutional conduct justify a substantial award. In this regard, this court observed that the damages awarded by the court for false imprisonment or deprivation of liberty ranges from RM2,000 per day (see *Iekmal Hisham Harun lwn. Siti Norfauziah Setapa & Yang Lain* [2023] 3 CLJ 745, RM10,000 per day for each of the five plaintiffs (see *Tan Sri Norian Mai & Ors v. Chua Tian Chang & Ors* [2015] 6 CLJ 1045, to RM15,000 per day (see *Ananthagopi Alaguganesan v. Menteri Dalam Negeri & Ors* [2024] 10 CLJ 539; [2025] 8 MLJ 181). In *Tan Sri Norian Mai* (*supra*), the five plaintiffs were deprived of their personal liberty by the police who asserted it "had reason to believe" were involved "in activities prejudicial to the security of Malaysia" but at the trial, no evidence for such a reason was produced.

[235] As to how much exemplary damages is to be awarded, in *Balamurugan*'s case (*supra*) this court said:

Public's Money

[120] However, herein lies the irony. Whilst it is well and good that the court shows its abhorrence of the wrongdoing by those empowered by the Government by making an award of exemplary or aggravated damages against the defendants, including the Government of Malaysia, the damages is going to be satisfied with the public's money, *ie*, the money of the public whose interest these wrongdoers were supposed to look after in the first place. It offends the concept of fairness, reasonableness and justice. In my considered view, the further order will serve as a more just and effective deterrent to prevent the repeat of such brutal acts being perpetrated in breach of the fundamental constitutional right to life by those thinking that any personal liability of theirs will be paid for by the Government.

[121] Margaret Thatcher, the former Prime Minister of the United Kingdom, said a fundamental truth when addressing the Conservative Party Conference in 1983* when she said:

> Let us never forget this fundamental truth. The State has no source of money other than the money people earn themselves. If the State wishes to spend more, it can do so only by borrowing your savings or by taxing you more. And it's no good thinking that someone else will pay [because] that someone else is you. There is no such thing as public money – there is only taxpayers money.
>
> *https://www. aei. org/carpe-diem/tribute-to-margaret-thatcher/

[122] Consistent with the aforesaid fundamental truth is the further irony that the higher the abhorrence is shown by the courts in the form of a higher award of damages, the bigger would be the amount the public is being asked to pay – to pay for the misdeeds and wrongdoings of the servants of the Government. And, the High Court at Shah Alam found two police officers, a political analyst and the Government of Malaysia jointly and severally liable to pay general, aggravated and exemplary damages in a combined sum of RM5,000,000.00, interest thereon at 5% from the date of the filing of the suit in 2007 until full settlement, and costs of RM25,000 for the unlawful killing of a Mongolian citizen, Altantuya Shaariibuu (see High Court at Shah Alam Civil Suit No. 21-120-2007 judgment dated 16 December 2022 which was affirmed on appeal to the Court of Appeal). It would most probably beggar belief and distress the sense of justice of the man on the street that he will be contributing towards the payment of damages ordered to be paid by the very person entrusted to protect him and who have been found liable for abusing such a power.

[236] Thus, to minimise the impact on the public purse, this court had in *Balamurugan*'s case (*supra*) made a further order that before seeking payment from the Government, the judgment is to be first satisfied by the tortfeasor who was the police officer who had beaten the detainee whilst under his

custody and, in defiance of a Magistrate's order, refused to bring the detainee who complained about being unwell, to the hospital, with the detainee found dead that very night. Upon appeal, by consent, this part of the further order was set aside leaving intact the rest of the judgment.

[237] With respect, this court thinks it is time for the Government to seek contribution in whole or in part from the actual tortfeasors bearing in mind the views expressed by the court on the irony of the higher the abhorrence shown by way of a higher award, the bigger the amount the public has to pay, when these are the tortfeasors who were to preserve the peace and security of Malaysia, entrusted with the duty to look after the prevention and detection of crime, the apprehension and prosecution of offenders.

[238] Adjectival law in the form of O. 16 r. 8(1)(a), (b) and (c) of the ROC can be pressed in aid to sue for contribution and indemnity. In the *Balamurugan*'s case this court had occasion to say as follows on the immunity provision against individual liability housed in s. 33(4) of the Government Proceedings Act 1956 ("GPA"):

> Immunity Provision In Section 33(4) Of The GPA - Whether Applicable
>
> [90] However, s. 33(4) of the GPA has the words "and no person shall be individually liable under any order for the payment by the Government or any officer of the Government as such". It suggests that it immunises the persons who are found liable from having to individually make payment.
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> [91] **In my considered view, with respect, the tort committed by the second defendant is not a mere tort of negligence. It is a constitutional tort**. He deprived the life of the deceased by beating him up and the deceased was denied prompt medical attention despite a directive from the learned Magistrate to do so. The life of Balamurugan was taken in breach of his fundamental liberty housed in art. 5 of the Federal Constitution by the second defendant.
>
> [92] In my respectful opinion, in such a circumstance, for the primary tortfeasor, in this case the second defendant, to be immunised from personal liability to make payment would severely negate the sanctity of the fundamental liberty provision of art. 5 of the Federal Constitution, which is the supreme law of the Federation of Malaysia. Could this be the reason that death-in- custody cases continue unabated? Could this be why persons such as the second defendant dare to act with impunity under the impression that he would not have to bear personal financial obligations for any judgment obtained against him? And to add to the injustice of it all, as will be made clear in the following paragraphs, if this provision is not construed to deny the second defendant from enjoying such an immunity, it is the very society whom the police is entrusted with the power to look after, that will end up paying for the heinous misdeed of the second defendant who is a member of the police force.

> [93] *In my respectful view, the immunity provision in sub-s. 33(4) of the GPA can only be enjoyed by a public officer if he was acting or purporting to act in good faith as prescribed under s. 5 of the GPA (supra).* Subjecting the deceased to beatings whilst he was under detention, resulting in the 20 marks of personal injuries collectively found on his body by the two pathologists (*supra*) and which led to his death, surely cannot be done or purporting to be done in good faith. As a result, in my considered view, in the circumstances of this case, the second defendant does not qualify to enjoy the immunity in sub-s. 33(4) of the GPA.
>
> (emphasis added)

[239] This court had in *Balamurugan*'s case (see para. 95) observed that even judges and persons acting judicially can be found liable, if any one of them, does not, in good faith, believe himself or herself to have jurisdiction to do or order the act complained of. See s. 14(1) of the CJA which is reproduced hereunder.

> (1) No Judge or other person acting judicially shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction, nor shall any order for costs be made against him, **provided that he at the time in good faith believed himself to have jurisdiction to do or order the act complained of**.
>
> (emphasis added)

[240] In my considered opinion, the spectre of having to contribute or indemnify towards damages, like the sword of Damocles, can be an effective deterrent to prevent the recurrence of transgression of fundamental liberties by those in power. At the same time, the bad apples can be weeded out so that the majority of the good men and women who serve with dedication will not be tarred by the same brush, and the term institutional failure will fade into obscurity.

[241] From the factual matrix of this case, it is abundantly clear that an award of damages will not bring closure to Pi's abduction. The plaintiffs have pleaded a prayer for such further or other order as this court deems fit and/or otherwise appropriate, and thus, this court has the power to mould such relief as may be necessary to do justice bearing in mind the additional powers conferred upon this court by para. 1 of the Schedule of the CJA (*supra*).

[242] In the premises, the court finds that the plaintiffs are entitled to general, aggravated and exemplary damages. In addition, mandatory relief will be granted to secure compliance with the State's continuing duty to investigate and disclose the whereabouts or fate of P1.

A **Issue No 7 - Whether D13 Is Vicariously Liable For All Or Any Of The Acts Of The D1 To D12**

Rival Contentions

[243] The plaintiffs submit that D13, as the Government of Malaysia, is
B vicariously liable for the tortious acts, constitutional violations, misfeasance, conspiracy, negligence and/or omissions of D1 to D12, who at all material times were public officers acting under the authority, direction and control of the State.

[244] The plaintiffs assert that D1 to D12 are officers of the Royal Malaysia
C Police or related enforcement agencies, and were therefore acting within the scope of their employment, or alternatively, in the ostensible course of exercising powers of the State. Even if particular officers had acted *ultra vires*, the plaintiffs asserted that the impugned conduct relating to enforcement functions, was sufficiently connected to their public duties such that
D vicarious liability arises.

[245] The plaintiffs rely on the cumulative evidence demonstrating that certain police personnel, including senior officers, were allegedly directly involved or acquiesced in the abduction of P1 and subsequent suppression of information. They rely in particular on:

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(i) testimony of P2/PW4 that officers were implicated in the SUHAKAM inquiry and had knowledge of the perpetrators;

(ii) portions of testimony by CP Zamri (PW9) and Datuk Rahim Uda (PW11) confirming that STF investigations identified police officers and
F linked disappearances to a co-ordinated operational unit; and

(iii) SUHAKAM findings suggesting that the disappearance of P1 and another case (Amri Che Mat) were perpetrated by members of the special branch.

These, the plaintiffs submitted, demonstrate that the tortfeasors acted as State
G actors and, therefore, D13 must answer in damages.

[246] The plaintiffs further contend that where State agents are alleged to have abused their office, the State remains liable under common law for the acts of its employees. They say this applies even where the conduct was
H unlawful or contrary to instructions, as long as it was sufficiently connected to the employment function. The investigative failures and obstruction allegedly committed by police are also said to engage the State's vicarious liability.

[247] The defendants submit that D13 cannot be vicariously liable because
I the plaintiffs have failed to prove that D1 to D12 (save for D9 against whom the plaintiffs have discontinued their claims) have committed any tort or actionable wrongdoing. In the absence of primary liability, there can be no secondary liability.

[248] It was further submitted by the defendants that the alleged abduction was not shown to be carried out within the scope of public duties. The defendants argue that, if any group abducted P1, their actions, being criminal, would be outside the course of employment, breaking the chain necessary to fix vicarious liability on D13.

[249] The defendants contend that the plaintiffs' reliance on SUHAKAM and the STF findings cannot ground vicarious liability because such findings are not binding, lacked compulsion powers, and do not definitively identify police personnel as perpetrators. The defendants emphasised that PW11 acknowledged that the STF process did not yield direct evidence implicating any named officer.

[250] The defendants asserted that any investigative omissions do not establish vicarious liability. They submitted that decisions concerning investigative priorities or prosecution are discretionary, and not actionable in tort. Consequently, even if the plaintiffs dispute the adequacy of investigations, such dissatisfaction cannot render D13 vicariously liable.

[251] Finally, the defendants submitted that the plaintiffs have not proven any act, direction, instruction, or acquiescence by D13 connecting it to the alleged wrongdoing. In the absence of such nexus, vicarious liability must fail.

Court's Analysis And Findings

[252] The question of vicarious liability turns on whether D1 to D12 (save for D9) found liable in the preceding issues, were at all material times acting in the course of their employment or in purported exercise of their public duties as police officers. The plaintiffs contend that the acts and omissions complained of were carried out by officers of the PDRM (D12) including the special branch, and, therefore, the Government (D13), as employer, bears responsibility pursuant to s. 5 of the Government Proceedings Act 1956.

[253] It is an established principle that the State may be vicariously liable for unlawful acts of its officers done in the purported exercise of statutory functions, even if such acts were in excess of authority or expressly prohibited. The law looks to whether the wrongful acts are sufficiently connected to the employee's assigned functions so as to make it just to impose liability on the employer.

[254] The defendants submitted that the abduction, being unlawful, falls outside the course of employment. With respect, such submission is overly simplistic. While criminality may vitiate authority, it does not automatically sever the employment nexus, see *GMP Kaisar Security (M) Sdn Bhd v. Mohamad Amirul Amin Mohamed Amir* [2022] 10 CLJ 669 para. 31. The core inquiry is whether the wrongful acts were so closely connected with the officers' field of operation that they may be regarded, in context, as a misuse

of conferred functions. Here, the plaintiffs allege that the officers utilised and leveraged police resources, operational tactics, and institutional influence in perpetrating and concealing the abduction.

[255] The evidence demonstrates that several of the implicated officers, including senior personnel, had control over intelligence, access to official vehicle records, and oversight over investigations. In my considered view, the evidence as narrated under issues 1 to 5 above, shows that they have been deployed in connection with the abduction and subsequent suppression. This suggests that the wrongful acts were executed under the badge of public authority, notwithstanding their unlawful character.

[256] The handling of the gold-coloured Toyota Vios (PFC 1623) illustrates this connection. The vehicle was owned by D10, an operative of the special branch of D12, and was present at the scene of the abduction. The subsequent concealment of its ownership, revealed only during the SUHAKAM proceedings, implies institutional involvement. Such conduct could only have occurred with knowledge or acquiescence of officers acting within the apparatus of policing. The link between the Toyota Vios PFC 1623, D1 to D12, and the policing structure strengthens the case for vicarious liability.

[257] Further, the conduct of the investigation, including the delayed disclosure of material information, the charging and subsequent withdrawal of the case against Lam Chang Nam, and the re-direction of investigative focus, demonstrates misuse of investigative authority. These acts were not a private frolic; they were undertaken through mechanisms available only to police officers. In the context of vicarious liability, misuse of entrusted power by an employee in the course of performing (or purporting to perform) their duties is sufficient to bind the employer. See *GMP Kaisar Security* (*supra*) where the Federal Court adopted the following words of Lord Millet in the House of Lords case of *Lister v. Hesley Hall Ltd* [2002] 1 AC 215:

> So, it is no answer to say that the employee was guilty of intentional wrongdoing, or that his act was not merely tortious but criminal, or that he was acting exclusively for his own benefit, or that he was acting contrary to express instructions, or that his conduct was the very negation of his employer's duty.
>
> The law is mature enough to hold an employer vicariously liable for deliberate, criminal wrongdoing on the part of an employee without indulging in sophistry of this kind.

[258] The STF findings, as summarised by PW9 and PW11, point to operational overlap between P1's case and that of Amri Che Mat, both said to involve the same special branch unit. Although the defendants argue that STF findings are not binding, the court finds them persuasive. If multiple disappearances can be traced to a co-ordinated group acting through police networks, the inference is that these officers acted within their domain of responsibility, triggering vicarious liability.

[259] The defendants argue that no formal identification of individual perpetrators has been made. While specific individuals may not have been conclusively identified, the weight of the circumstantial evidence establishes that one or more officers were involved in the abduction or subsequent suppression. Once the plaintiffs establish that the tortfeasor(s) belonged to the class of public officers under the authority of D13, vicarious liability attaches.

[260] It is also material that D13 has neither disciplined nor prosecuted any identified officers in relation to this case. While such omission does not itself establish liability, it underscores that the individuals alleged to be involved remain under the State's structure and authority, reinforcing the relationship necessary for vicarious liability. In fact, D7 has since been promoted from an Inspector to an Assistant Superintendent of Police.

[261] The policy underpinning vicarious liability supports this conclusion. Police officers are endowed with coercive powers; the public must be assured that misuse of those powers will be remedied. Imposing liability on the State serves both to compensate victims and to deter institutional neglect. Where the acts complained of were carried out by officers under their badge of authority, it is just that the Government (D13) bear responsibility.

[262] The continuity of role is also important. Much of the harm suffered by the plaintiffs such as the ongoing deprivation of knowledge and emotional distress, flows not only from the abduction but from subsequent conduct of officers in frustrating genuine inquiry. These later acts clearly formed part of the officers' operational functions. Even if the abduction were to be deemed *ultra vires*, the later exercise of public powers connects the harm to the scope of employment.

[263] In the premises, this court finds that the acts and omissions of one or more of D1 to D12 (save for D9) were sufficiently connected with their duties as police officers so as to render D13 vicariously liable. The plaintiffs have proved, on a balance of probabilities, that the tortious acts and omissions were undertaken by public officials acting under colour of State authority; hence the Government must answer for the resulting harm.

Conclusion

[264] Upon careful consideration of the pleadings, evidence adduced, submissions of learned counsel and the learned Senior Federal Counsel, and the applicable legal principles, this court finds that the plaintiffs have proved their case on a balance of probabilities.

[265] The court is satisfied that P1 was forcibly taken on 13 February 2017 in a co-ordinated operation executed by a group of individuals acting jointly and with a degree of organisation suggestive of State operational capacity.

A The plaintiffs have further demonstrated that one or more of D1 to D12 were directly or indirectly involved in or had knowledge of the said abduction and/or enforced disappearance, whether acting jointly, in combination, or otherwise.

B **[266]** The court finds that the conduct of the relevant authorities following the abduction, including withholding of material information, misdirection of investigations, and obstruction of independent inquiry, is consistent with State-linked responsibility. The defendants have not discharged the evidential burden to rebut the inference of such involvement.

C **[267]** Accordingly, this court holds that P1's constitutional rights under arts. 5 and 8 of the Federal Constitution were violated. The statutory duties owed by the police under the Police Act 1967 were similarly breached.

[268] The plaintiffs have also established the constituent requirements of misfeasance in public office. The conduct of certain officers was in bad faith
D or, at the very least, undertaken with reckless indifference to the likelihood of harm to the plaintiffs.

[269] This court further finds that the facts support the existence of a combination or agreement between one or more of D1 to D12 (save for D9) to abduct P1 and subsequently conceal his fate, thereby causing harm to the
E plaintiffs.

[270] The plaintiffs have also proven negligence on the part of one or more of D1 to D12 in failing to take reasonable steps to investigate the disappearance and to pursue material leads with diligence and transparency.

F **[271]** D13, as employer of D1 to D12, is vicariously liable for the acts and omissions committed in the purported exercise of their public duties as police officers.

[272] In view of the above findings, the plaintiffs are entitled to general damages, aggravated damages, and exemplary damages. The court also finds
G it appropriate to grant mandatory relief to vindicate the violation of constitutional rights and to compel continued efforts toward ascertaining the fate of P1.

[273] In *Government Of Malaysia v. Lim Kit Siang & Another Case* [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63; [1988] 2 MLJ 123 the Supreme Court said that
H the Attorney-General is the guardian of public interest.

[274] This court directs D11 and D12 to recommence investigations as per the STF findings and recommendations, and to report to the AGC every two months from the date of this judgment on the updates of the investigations.
I This court directs the right Honourable Attorney-General to consider very carefully the grounds of decision herein when selecting the members who are to make up the AGC team to look into the updates and the action to be taken

henceforth. So as to avoid any perceived conflict of interest, this AGC team should not include members of the team of the Senior Federal Counsel and Federal Counsel involved in these proceedings.

Reliefs

Wherefore judgment is pronounced in favour of the plaintiffs with the following reliefs awarded:

P1

[275] General damages of RM10,000 per day as from 13 February 2017 until the defendants disclose with certainty the whereabouts of P1. In this regard, I bear in mind that in the case of the deceased Mongolian Altantuya Shaaribuu, even when she was bombed to bits with military grade explosives, her remains could still be identified and closure brought to her family (see *Shaaribuu Setev & Ors v. CIF Inspektor Azilah Hadri SA* HC Civil Suit No. 21-120-2007).

[276] Aggravated damages of RM1 million for the suppression of evidence and prolonged delay in bringing closure to the discovery of the whereabouts of P1.

[277] Exemplary damages of RM1 million by reason of, *inter alia*, oppressive, arbitrary or unconstitutional acts of D1 to D12 in combination amongst them.

[278] The damages adjudged in favour of P1 are to be deposited into a trust and interest generating account to be held on trust by persons or institutions, whose names, character references and *curriculum vitae* are to be supplied to the court for appointment as trustee or trustees until the whereabouts of P1 is ascertained and or disclosed.

P2

[279] General and aggravated damages of RM2 million for the suppression of evidence mental anguish and distress, and the prolonged delay in bringing closure to the discovery of the whereabouts of P1.

[280] Exemplary damages of RM1 million is awarded to P2 similarly by reason of, *inter alia*, oppressive, arbitrary or unconstitutional acts of D1 to D12 in combination amongst them.

P1 And P2

[281] D11 and D12 are to remove any of the defendants (D1 to D8) mentioned in this action from any investigative team investigating P1's disappearance, and D11 and D12 are to recommence the investigations as per the STF findings and recommendations, and to report to the AGC every two months from the date of this judgment on the updates of the investigation leading to the disclosure of the whereabouts of P1.

A **Interest**

[282] Interest shall accrue on the damages awarded from the date of judgment to the date of full realisation at the rate of 5% per annum.

Costs

B **[283]** Costs of RM250,000 to be paid by the defendants to the plaintiffs.

Liberty To Apply

[284] There shall be liberty to apply.

C **[285]** I end with a note of appreciation to all lead learned counsel, lead Senior Federal Counsel, learned *amicus curiae* together with their respective learned juniors for their comprehensive written submissions filed, and assistance rendered, which have greatly assisted this court in its deliberations before coming to its decision.

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